103

TICKET FEE DISCLOSURE

4. EN 2/3: 103-164

icket Fee Disclosure, Serial No. 1...

HEARING

BEFORE THE

SUBCOMMITTEE ON
TRANSPORTATION AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON
ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

SEPTEMBER 29, 1994

Serial No. 103–164

Printed for the use of the Committee on Energy and Commerce

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ISBN 0-16-046822-1

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TICKET FEE DISCLOSURE

THURSDAY, SEPTEMBER 29, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TRANSPORTATION
AND HAZARDOUS MATERIALS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:50 a.m., in room 2123, Rayburn House Office Building; Hon. Thomas J. Manton presiding.

Mr. MANTON. The subcommittee will come to order.

Today we are holding this legislative hearing on legislation introduced by the chairman of the committee, Mr. Dingell, that will provide consumers with appropriate and timely disclosure of convenience fees, service charges and other add-on charges and fees that are often included in the price of a ticket for entertainment and sporting events. These fees and charges are not always fully disclosed and they are always of an amount above the actual face value of the ticket.

This legislation is also sponsored by Mr. Swift, the chairman of this subcommittee, and Mr. Condit, the chairman of the Subcommittee on Information, Justice, Transportation and Agriculture of the Government Operations Committee. Mr. Condit's subcommittee held a very informative and constructive hearing on this issue on June 30 of this year. We are pleased by his cosponsorship of this legislation.

The "Ticket Fee Disclosure Act of 1994" makes it unlawful for any person who sells or resells entertainment or sporting event tickets to: (1) fail to disclose to the purchaser prior to the purchase of any such ticket any fee, charge or other assessment to be imposed in excess of the face amount of the ticket; and (2) to fail to have the amount of any such fee, charge or assessment printed on the ticket or on a receipt of any such ticket sale.

Under the bill, this Federal prohibition will be enforced by the Federal Trade Commission and also State attorneys general who are empowered under the legislation to enforce the prohibition on behalf of residents of their States. In this regard, the legislation parallels other commercial practices legislation developed by this committee: the pay-per-call bill from the last Congress and the telemarketing bill signed into law this summer.

Represented today as witnesses are the Federal Trade Commission, the largest ticket seller in the country, an organization of ticket brokers, and a consumer group. With this ecumenical group before us, I expect the subcommittee will be able to get responsive

answers to questions about how much information is currently being given to consumers about service charges, whether these charges are governed by actual transaction costs or by other considerations, and whether there is a trend of increasing service costs, and if so, what is driving those costs.

With that said, I now recognize Mr. Oxley, our ranking member.

Mr. OXLEY. Thank you, Mr. Chairman. I want to commend you and Chairman Dingell for this timely hearing on legislation to address the issue of full disclosure in the pricing of entertainment and sports events tickets. This is an area of consumer protection where the Congress and the subcommittee may well have a role to play.

As in other areas the subcommittee has dealt with in recent months, notably telemarketing and 900 number telecommunications transactions, ticket sales appear to be undergoing something of a technological revolution. We have already progressed beyond rolls of paper tickets to computer generated tickets and even computer networks that allow remote points of sale to be monitored instantly so that ticket inventory is always current. As these trends continue, the Congress and the Federal Trade Commission have an obligation to examine whether consumers are being adequately informed about the nature and cost of their ticket transactions.

I look forward to an informative hearing. Mr. Chairman, at this point I would ask unanimous consent that the statement of Hon. Carlos J. Moorhead, the ranking member of the full committee, be made a part of the record at this point.

Mr. MANTON. Without objection, so ordered.

The Chair recognizes Mr. Klug.

Mr. KLUG. Thank you, Mr. Chairman, and thanks for allowing me to be part of this hearing today although I serve on other subcommittees.

My interest in today's hearing isn't necessarily on music events, which is what really triggered Congressman Condit's interest in this originally, but problems stemming from last year's appearance by the University of Wisconsin in the Rose Bowl in which thousands of Wisconsin fans suddenly found themselves in California without tickets, tickets that in many cases had been promised by ticket brokers and oftentimes contracts had been signed by ticket brokers promising delivery of the contracts.

While I think today's legislation is an important step requiring additional disclosure along the way, it's my hope that when this bill moves out of committee sometime next year that we also give the Federal Trade Commission additional power to be able to enforce that people cannot offer contracts in large blocks, period, unless they have those contracts in hand.

We had been hopeful for a time that the Department of Transportation would also promulgate regulations involving charter operations. If you look back, there were substantial problems over the years with Super Bowl tickets and delivery of Super Bowl tickets, and so it was the Department of Transportation's commitment to develop new regulations to essentially say if charter operations can't deliver on tickets they have promised that eventually they would have the ability to yank charter operations. We have done that in the Super Bowl and it's my hope by the end of this year

we will make sure that it applies as well to the Rose Bowl, the Final Four, World Cup, major league baseball, if and when it resumes, and maybe if Ohio State manages to make a bowl game this year.

Thank you, Mr. Chairman.

Mr. MANTON. The Chair recognizes Mr. Condit.

STATEMENT OF HON. GARY A. CONDIT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CONDIT. Mr. Chairman and members of the subcommittee, I appreciate the opportunity to testify before you today on H.R. 4995, the "Ticket Fee Disclosure Act of 1994." I'm proud to be an original cosponsor of the legislation with Chairman Swift and Chairman Dingell.

I believe the House Energy and Commerce Committee is the appropriate forum to address some pressing consumer issues in the ticket distribution industry for concerts, sporting events and other forms of entertainment. I applaud your work in this area and hope that this is the first step in major legislative reform.

The Ticket Fee Disclosure Act is admittedly limited in scope, simply requiring ticket firms to disclose on the face of a ticket the cost of handling and other convenience charges. I know of no one who disagrees that the consumer ought to be made fully aware of what they are paying for when purchasing any type of entertainment ticket whether through an over-the-phone transaction or at the box office.

I think we will find broad bipartisan support in this approach. I must say, Mr. Chairman and members of the committee, we have found support for this effort through the ticket industry. Ticketmaster has been very straightforward in helping us come to grips with this particular bill and they have been very helpful and supportive in the effort. The consumer groups across this country as well have been supportive, and so I think you are going to find unanimous support through the industry and throughout consumer groups in support of this.

The House Government Operations Subcommittee has worked in this area. We have given a lot of time to it and we think this is one of the first steps in a solution to the problem that we are facing.

Mr. Chairman, millions and millions of American consumers are looking to our committees to have the courage to enact strong consumer protection measures that reform this marketplace. We do not understand how many consumers are interested in this issue. We found when we held a hearing tremendous interest across the country in this issue simply because so many middle Americans participate in these kinds of activities.

As Mr. Klug has mentioned, it's not just the music industry. It is sporting events; it is cultural events; it is music events; and you find that Americans across the board are interested in this topic. Particularly young Americans are uniquely familiar with this issue and are playing close attention to what we do here. Let's not disappoint them. Let us do the right thing.

I want to thank you and Chairman Swift and Chairman Dingell for your attention and for your support in this effort and I pledge

to you my cooperation to work with you to make this happen hopefully before we go home for a break.

Thank you, Mr. Chairman. I'm here to answer any questions that you might have.

Mr. MANTON. Are there any questions?

[No response.]

Mr. CONDIT. Mr. Chairman, I have a lengthy statement I would like to submit for the record. I tried to break it down for you so that we didn't take too much time.

Mr. MANTON. Without objection, the full statement of the Congressman will be included in the record.

Our first panel on our witness list will be Mr. Christian White, acting director, Bureau of Consumer Protection, Federal Trade Commission.

STATEMENT OF CHRISTIAN S. WHITE, ACTING DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Mr. WHITE. Thank you very much, Mr. Chairman and members of the subcommittee. I am indeed Chris White, acting director of the Bureau of Consumer Protection at the Federal Trade Commission. I appreciate this opportunity to appear on behalf of the Federal Trade Commission to provide the Commission's views on H.R. 4995, the "Ticket Fee Disclosure Act of 1994." I should say the views in the statement are those of the full Commission. My responses to any questions you may have don't necessarily represent a Commissioner or the full Commission.

Mr. Chairman, before I begin, I can't sit here without telling you that Chairman Steiger has asked me to express her gratitude and the gratitude of those at the Commission for the leadership and guidance that produced for the first time in so many years an authorization bill for the Federal Trade Commission. We appreciate that. That's a signal of the Congress' confirmation of the Commission's actions, and we are deeply grateful for that. We know that would not have happened but for the hard work over so many years of this subcommittee and the full committee and particularly the personal involvement of Chairman Swift and Chairman Dingell. So we are deeply appreciative.

I would like to discuss the provisions of the bill and then make a point or two about the disclosure requirements that it entails. But I would like to just briefly review the enforcement structure in the bill. You have described the ultimate objective and I've heard it said that it's one that no one could dispute, that purchasers of tickets for entertainment and sporting events receive full, complete and clear disclosure of any charges or fees in excess of the face amount of the ticket.

Section 2 of the bill states generally that failure to provide such disclosure is unfair and deceptive within the meaning of section 5 of the Federal Trade Commission Act.

Section 3 proscribes two specific acts or practices. First, it would be unlawful for sellers or resellers of tickets to fail to disclose to a ticket purchaser prior to purchase any fee, charge or assessment in excess of the face amount of the ticket.

Section 3(2) would require that such sellers or resellers of tickets print the amount of any such fee, charge or assessment on the ticket or on a receipt evidencing the ticket sale.

The bill would provide explicit enforcement authority for the Federal Trade Commission and for State attorneys general. The bill provides that a violation of the provisions of the statute can be enforced by the Commission in the same manner as if it were a violation of the FTC Act, the Commission's basic organic statute.

The bill also provides for enforcement to obtain civil penalties as if a violation were the violation of a trade regulation rule.

The bill also provides the opportunity in an appropriate civil action for the enforcer to obtain redress for the consumers or businesses that may have been injured by violations.

The bill would empower a State attorney general to enforce these prohibitions by bringing a civil action on behalf of residents of the State in a Federal District Court whenever the attorney general has reason to believe that the interests of residents of the State have been or are being threatened or adversely affected by a violation of the law.

The Commission's position on H.R. 4995 is simply that we appreciate the way the bill has been structured as a self-contained statute that refers to, relies upon cross references of section 5 of the FTC Act, but does not amend it. We note that the bill does not direct State enforcement of that statute but provides ample authority for States to proceed. The approach embodied in the bill, the Commission believes, will allow the States to bring actions to address disclosure violations but avoids the potential for inconsistent enforcement of the FTC Act nationwide and inconsistent judicial determinations.

I think I should say, Mr. Chairman and members of the committee, also that in the past 5 or 6 years the Commission has worked extremely hard to improve and develop effective working relationships with State attorneys general. I believe in large measure we have accomplished that in this bill, in the Telemarketing Act, in the study of Federal-State relationships that the authorization bill requires. We are working extremely closely with the attorneys general and their association to ensure that we forge the most effective working partnership that we can for American consumers.

Because the bill incorporates section 5's prohibition of unfair or deceptive practices, it is relevant to consider case law under section 5 which provides a clear framework of analysis for both deceptive acts or practices and unfair acts or practices. Under this framework, an act is deceptive if it is likely to mislead consumers acting reasonably under the circumstances about a material fact. An act or practice is material if it involves information that is important to consumers and is thus likely to affect their choice of or conduct regarding a product.

In short, Mr. Chairman, we believe that price information about these tickets would indeed be material to consumers, and that is the premise of this statute.

We think that disclosure of this information may benefit consumers by allowing them to shop for the location or event that does not charge a service fee. In turn, competition among ticket sellers may increase as may their incentive to lower any added charges.

However, if the bill is intended to ensure that consumers receive all material price information before they commit to a ticket purchase, the use of the phrase "prior to purchase" in section 3(1) of the bill may raise some ambiguity. Under traditional contract law analysis there is no purchase until the transaction between the consumer and the seller is consummated by the consumer's agreement to pay, or in the case of credit purchases, authorizing charges to his or her account.

The Commission has little information regarding disclosure practices in the ticket service industry. It appears, however, that in many cases prospective purchasers seeking to buy tickets by telephone do in fact receive disclosure of the fees, charges or assessment amounts before they conclude the conversation. That is, consumers are likely to have received such information before they have given final approval to have charges billed to a credit card.

Similarly, prospective purchasers of tickets from various ticket outlets, often located at department stores or retail chains, may learn of service charges before the purchase is consummated. Nevertheless, consumers may not learn this information until after incurring most of the transaction costs of the purchase. It can be a serious endeavor to get through the process necessary, especially in the case of popular tickets. I'm sure there is no one in the room who hasn't experienced that. Thus consumers may incur some costs before they get to the process where they find out that the fee is imposed.

Even if the charge is disclosed when the consumer can still halt the transaction without incurring financial liability, prospective purchasers may already have been induced to incur those costs: time standing line, waiting on hold, traveling to the place where the transaction can occur.

The subcommittee may therefore wish to consider revising the prior to purchase limitation to specify that the disclosure of any service fee identified as such be made immediately after in any audio communication or immediately adjacent to in written communications the advertising representation about the price of a ticket. This is the approach taken by the Commission in its recently adopted 900 number rule, pay-per-call service rule that you mentioned, Mr. Chairman, to ensure timely and adequate disclosure of the cost of 900 number telephone calls.

The Commission took that approach because the Telephone Disclosure and Dispute Resolution Act mandated it in response to the problem that consumers often immediately incurred a service fee as soon as they had dialed the 900 number. Here an alternative may be to require advertising disclosure that additional mandatory charges may apply in connection with a ticket sale. Although this alternative does not provide the full amount of the service charge, such a disclosure would at least put consumers on notice of the existence of the charge and allow them the opportunity to inquire about the applicable fee. A prospective purchaser could, for example, call the theater or arena directly instead of the telephone seller. Either alternative would avert the problem of disclosure occurring at the very, very end of the sales process.

Mr. Chairman, the Commission generally favors full and timely disclosure of material information in order to enable consumers to make informed purchasing decisions.

I would be pleased to answer any questions that I am able to that you have about this issue.

[The prepared statement of Christian S. White follows:]

PREPARED STATEMENT OF CHRISTIAN S. WHITE, ACTING DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Mr. Chairman and members of the Subcommittee: I am Christian S. White, Acting Director of the Bureau of Consumer Protection of the Federal Trade Commission.[1] I appreciate this opportunity to appear before the Subcommittee today on behalf of the Commission to provide the Commission's views on H.R. 4995, the "Ticket Fee Disclosure Act of 1994."

H.R. 4995 ("the Bill") is designed to provide that purchasers of tickets for entertainment and sporting events receive "full, complete, and clear disclosure" of any charges or fees in excess of the face amount of the ticket. Section 2 of the Bill states generally that failure to provide such disclosure is unfair and deceptive[2] within the meaning of Section 5 of the Federal Trade Commission Act. Section 3 proscribes two specific acts or practices: Section 3(1) would make it unlawful for sellers and resellers or ticket brokers to fail to disclose to a ticket purchaser, prior to purchase, "any fee, charge, or assessment... to be imposed in excess of the face amount of the ticket;" and Section 3(2) would require such sellers and resellers of tickets to print the amount of any such fee, charge or assessment on the ticket or on a receipt evidencing the ticket sale.

Sections 4 and 5 of the Bill establish the manner in which the prohibitions and requirements of Section 3 of the Bill would be enforced. Under these provisions, both the Commission and the state attorneys general would be empowered to enforce the Bill. As to Commission enforcement, Section 4(b) of the Bill would authorize the Commission to enforce Section 3 "in the same manner, by the same means, and with the same jurisdiction, powers, and duties" as are available to the Commission under the Federal Trade Commission Act, 15 U.S.C. § 41 *et sec.*[3] Section 4(c) specifies that a violation of Section 3 of the Bill would be tantamount to a violation of a trade regulation rule promulgated under Section 18 of the Federal Trade Commission Act, 15 U.S.C. § 57a. This means that a violator of Section 3 could be required to pay a civil penalty of up to $10,000 per violation, as provided by Section 5(m)(1)(A) of the FTC Act,[4] to pay redress for consumer injury, and be subject to other equitable remedies as provided by Section 19 of the FTC Act.[5]

Section 5 of the Bill would empower a state attorney general to enforce Section 3 by bringing a civil action on behalf of the residents of the state in federal district court whenever the attorney general "has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected" by a violation of the law.

H.R. 4995 is based on the language of Section 5 of the FTC Act, which declares unlawful "unfair or deceptive acts or practices in or affecting commerce." The Commission appreciates that the Bill has been structured as a self-contained statute that cross-references but does not amend Section 5 of the FTC Act, and believes that this approach provides clarity and avoids the need for a rulemaking proceeding. The

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[1] The views expressed in this statement represent the views of the Commission. My responses to any questions you may have are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

[2] We recommend that the phrase "unfair and deceptive" in Section 2 of the Bill be conformed to the language of Section 5 of the FTC Act: "unfair or deceptive acts or practices..." 15 U.S.C. § 45.

[3] *See, e.g.*, Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*; Equal Credit Opportunity Act, 15 U.S.C. § 1691; Fair Debt Collection Practices Act, 15 U.S.C. § 1692.

[4] This section provides that "[t]he Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this Act... with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $10,000 for each violation." 15 U.S.C. 45(m)(1)(A).

[5] "The court in an action [to enforce a rule adopted under the Act]... shall have jurisdiction to grant such relief as the court finds necessary to redress injury to consumers or other persons, partnerships, and corporations resulting from the rule violation... Such relief may include... rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation... 15 U.S.C. § 57b.

Commission also notes that H.R. 4995 does not amend Section 5 of the FTC Act to provide for direct state enforcement of that statute. The Commission believes that the approach embodied in Section 5 of the Bill, which authorizes states to bring their own actions to address disclosure violations, avoids the potential for inconsistent enforcement of the FTC Act nationwide and inconsistent judicial determinations.

Because the Bill incorporates Section 5's prohibition of unfair or deceptive practices, it is relevant to consider case law under Section 5, which provides a clear framework of analysis for both deceptive acts or practices and unfair acts or practices. Under this framework, an act or practice is deceptive if it is likely to mislead consumers acting reasonably under-the circumstances about a material fact.[6] An act or practice is material if it involves information that is important to consumers, and is thus likely to affect their choice of, or conduct regarding, a product.[7]

This legislation seeks to ensure that the prospective purchaser will be completely informed of the total cost of a particular ticket—the cost of the ticket alone, and any fees added to that cost by the company selling the ticket—before a purchase is made. As reflected in the Bill, the imposition of any charge by a ticket seller in excess of the ticket's face amount is information that is material to a prospective purchaser. We agree that such price information is clearly material, as the Commission uses that term under the FTC Act, and its disclosure may benefit consumers by allowing them to shop for the location or event that does not charge a service fee. In turn, competition among ticket sellers may increase, as may their incentive to lower any added charges.

However, if the Bill is intended to ensure that consumers receive all material price information before they commit to a ticket purchase, the use of the phrase "prior to purchase" in Section 3(1) of the Bill may raise some ambiguity. Under traditional contract law analysis, there is no "purchase" until the transaction between the consumer and the seller is consummated by the consumer's agreeing to pay all charges, or in the case of credit card purchases, authorizing charges to his or her account. The Commission has little information regarding disclosure practices in the ticket service industry. It appears, however, that in many cases, prospective purchasers seeking to buy tickets by telephone already may receive disclosure of extra fees, charges or assessment amounts before they conclude the conversation. That is, consumers are likely to have received such information before they have given final approval to have charges billed to their credit card accounts. Similarly, prospective purchasers of tickets from various ticket outlets, often located at department stores or other retail chains, may be informed of service charges before purchases are consummated. Nevertheless, consumers may not receive this information until after incurring most of the transaction costs of the purchase.

When ticket vendors disclose service fees after the consumer selects the desired tickets but before any payment is made, the consumer's ability to make an informed purchase may be frustrated if he or she was induced to purchase a ticket by an advertisement that listed a ticket price that did not include the extra fee, or did not otherwise mention it.[8] This is particularly true where consumers may not purchase a ticket without incurring a service charge, such as, for example, where a sports arena or theater charges an additional fee even for tickets purchased at the site of the scheduled event. Even if the charge is disclosed when the consumer still can halt the transaction without incurring financial liability for the purchase, prospective purchasers may already have been induced to incur significant costs in terms of time and effort spent, perhaps driving some distance to a ticket outlet and waiting in line, or holding on the telephone to make a purchase, before receiving information about additional charges. Under these circumstances, consumers may pay the extra amount simply because they already have gone to such lengths to secure the particular tickets desired, or missed the opportunity to spend their time more productively.

The Subcommittee, therefore, may wish to consider revising the "prior to purchase" limitation to specify that the disclosure of any service fee, identified as such, be made immediately after (in audio communications), or immediately adjacent to (in written communications), any advertising representation about the price of a ticket.[9] This is the approach taken by the Commission in its recently adopted 900

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[6] *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 163-165 (1984).

[7] *Id.*

[8] *See, e.g., Nutri/System, Inc.*, C-3474 (consent order dated December 28, 1993); Physician's Weight Loss Centers, Inc., C-3476 (consent order dated December 28, 1993) (failure to disclose in advertisement that advertised price of weight loss program did not include cost of food, a mandatory component of the program, alleged to constitute a deceptive practice).

[9] The cost of such calls must be disclosed "adjacent to" 900 numbers in video and print advertisements, and "immediately following" the mention of 900 numbers in radio advertisements. 16 C.F.R. § 308.3.(b)(2)(i)-(iii).

Number Rule to ensure timely and adequate disclosure of the costs of 900 number telephone calls. The Commission took that approach because the Telephone Disclosure and Dispute Resolution Act of 1992[10] mandated it in response to the problem that consumers often immediately incurred service fees when they dialed a 900 number. Here, an alternative may be to require an advertising disclosure that additional, mandatory charges may apply in connection with the ticket sale.[11] Although this alternative does not provide the full amount of the service charge, such a disclosure would put consumers on notice of the existence of the charge, and allows them the opportunity to inquire about the applicable fee. A prospective purchaser could, for example, call the theater or arena directly instead of the telephone seller. Either alternative would avert the problem of disclosure occurring at a late point in the sales process.

As a general matter, the Commission favors full and timely disclosure of material information in order to enable consumers to make an informed purchasing decision.

Thank you for the opportunity to appear today and to provide the Commission's views on H.R. 4995. I am pleased to respond to any questions the Committee may ask.

Mr. MANTON. Thank you, Mr. White.

You make a point in your testimony that even when a ticket seller may advise a customer over the telephone or at a ticket outlet of added charges and fees before the purchase is actually made that the potential customer may still be at a disadvantage. For example, if the consumer has already expended significant time or energy in waiting at the phone or driving to an outlet before they are informed of the extra charges or fees required to purchase the ticket, then, as you say, consumers may pay an extra amount simply because they have already gone to such lengths to secure the particular tickets desired. This seems analogous to concerns this committee had which you made mention of, the clear disclosure of 900 number charges.

How does the FTC's recently promulgated 900 number rule handle advertising requirements?

Mr. WHITE. Mr. Chairman, I will be happy to submit the entirety of the rule and our layman's language discussion of it for the record. Suffice it to say that the rule requires disclosure of either the cost of the call in a pay-per-call transaction, or if the cost of the call varies over time or on some other calculable basis, how it is that the charges will be calculated. The premise of the approach taken in the 900 number area is that consumers ought to have enough information so that they can quickly and easily decide if it's a transaction they wish to pursue.

At the same time, in drafting a regulation, as any regulation the Commission might have to consider, there are some costs and other issues of difficulty for the advertisers to be weighed in the balance. So what we tried to do is strike a balance to ensure that the information was there but not require more than would be useful to consumers.

Mr. MANTON. The bottom line is that the prospective purchaser will have detailed in some way all of the charges before the actual purchase is made.

Mr. WHITE. That's correct. Even before dialing they will know in most instances what the charges will be or how the charges will be calculated before they pick up the telephone. The 900 number

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[10] 15 U.S.C. § 5701 *et seq.*

[11] *See, e.g., Dollar Rent-A-Car System. Inc.*, FTC Docket No. C-3421 (consent order dated March 29, 1993); and *Value Rent-A Car, Inc.*, FTC Docket No. C-3420 (consent order dated March 29, 1993).

rule and the statute also provide disclosure to consumers in a preamble so that when the consumer has, let us say, seen an ad and says, that's a service I want to get, makes the call, the rule requires that the 900 number service seller provide a preamble which indicates that there are charges, what the charges are or how they will be calculated, generally what the service is that is provided. The consumer can then decide to incur the charges or hang up without any cost.

Mr. MANTON. The Commission suggests two approaches to tightening advertising fee disclosure requirements for ticket sales, strict enumeration of all fees and charges or a more general disclaimer that such charges may be included. As head of the Consumer Protection Bureau, which approach do you feel would be the most useful in ensuring fair and non-deceptive disclosure.

Mr. WHITE. Mr. Chairman, you have said what I need to say and that I said at the outset. The Commission has suggested these two alternatives that the committee should consider. From the standpoint of the Consumer Protection Bureau, we know several things. The more specific the information the more usable it will be for consumers. So from the consumer standpoint there would be an advantage to enumerating particularly what these fees would be. We also have to acknowledge that to do so may in some contexts be complicated and take up space in an advertisement that the advertisers would just as soon devote to something else. So there is a certain amount of balancing that has to occur. From the consumer standpoint, and I think the Commission's statement makes this clear, it is advantageous to have as much information available as early in the process of deciding about tickets as is possible.

Mr. MANTON. Finally, this legislation empowers the State attorneys general to enforce its provisions. This is the same approach used by the committee in the 900 number bill and the telemarketing bill. How has the FTC-state AG partnership worked out so far in those two areas?

Mr. WHITE. Mr. Chairman, I believe it is working out extremely well. We are in the early stages of enforcing the 900 number rule and of course we are working now to develop the rule that is required by the Telemarketing Fraud Act.

As I said earlier, one of the things that has benefited us at the Commission, particularly in the Bureau of Consumer Protection, is the working relationship that we have developed over the years with the State attorneys general. We have undertaken to develop materials that we think will assist the State attorneys general in understanding our view of the law and to provide them with materials and draft pleadings, if you will, that will assist them in any enforcement actions they take.

In general, the relationship is excellent. Like any relationship, there are aspects of it I'm sure we could improve, and we wish to. But thus far that arrangement that has been taken in those two statutes from our standpoint is proceeding extremely well. We will, of course, see more developments in that area as cases in the enforcement of these two statutes are developing.

Mr. MANTON. I thank you and turn you over to Mr. Klug for questions.

Mr. KLUG. Mr. White, thanks. I'm going to change the direction a little bit on you, but first, let me thank Commissioner Steiger for her longstanding interest in the problems at the Rose Bowl last year, given her ties to Wisconsin, and also Eileen Harrington on your staff, who is both a University of Wisconsin graduate and also a Madison native. So we have good advocates at the FTC.

It seemed to me when we talked to them early last year when this problem first developed that there were some major gaps in the law that made it very difficult for the FTC to investigate ticket broker operations. Do you agree with that assessment?

Second, are there some proposed changes you would like to see, not as to the price of the ticket, but the guarantee and delivery of a ticket?

Mr. WHITE. I think you are talking about an area that involves the question of performance by package sellers, if you will, on their promises to deliver a trip to a spectacular event such as, for example, Wisconsin winning the Rose Bowl, as well as a ticket to that event. Those were instances in which there were rather severe difficulties for some of the purchasers in obtaining their tickets. That was, among other things, a clear breach of the agreements that these Badgers believed they had obtained.

That circumstance has been investigated very thoroughly and very carefully by the attorney general of Wisconsin and we stood ready to provide whatever support and assistance was believed necessary. It's my understanding that many of the consumers who were threatened with being in Pasadena without a ticket ultimately were able to obtain tickets, but that doesn't resolve the underlying problem.

Mr. KLUG. It doesn't resolve the underlying problem given the fact they were promised tickets at one price and then they were never delivered by the group that originally promised them. True, they could get other tickets on the street but not given what the original contractual arrangement was.

Mr. WHITE. Right, and there are, I am told, investigations under way of the behavior of the participants in those transactions by law enforcement authorities in southern California. My sense of this transaction from the perspective of the Federal Trade Commission is that there is sufficient authority to conduct investigations and determine whether law enforcement action by the Federal Trade Commission would be appropriate. As I say, we were ready and willing to provide whatever assistance the parties in this instance may have needed. As I believe it turned out, many of the specific problems by these particular consumers have been resolved.

Mr. KLUG. This is an advertisement that ran in a Pasadena newspaper last week that guaranteed delivery of tickets to the Rose Bowl. The Rose Bowl tickets have not been printed at this point nor have they been distributed or allocated. I don't know whether it's going to be Wisconsin or Michigan, as the chairman would like to see, or who it's going to be at the Rose Bowl this year, and whether it's the Rose Bowl or the Orange Bowl or the Citrus Bowl or the Sugar Bowl or the Final Four, we are developing a real problem nationally with this. I guess my bottom line question to you is, what is it that we need to do to give you the resources and the authority to put an end to this?

Mr. WHITE. My simple answer is I believe we have the authority to pursue it. Obviously resources are always an issue and every time we confront a particular problem we have to decide whether we are the best situated law enforcement agency to pursue it. I would be happy to look into that particular ad and the issue generally and take whatever action we can to be sure that these circumstances don't recur.

Mr. TAUZIN. Would the gentleman yield? I think I follow this correctly. You are not asking that the Commission guarantee a Wisconsin win. Just that people get tickets when they are promised them, right?

Mr. KLUG. I thank my colleague from Louisiana. There has been a long history of problems. It's not only with the Rose Bowl. There was, for example, a history of promises with the Super Bowl some years ago, in 1977, and the Department of Transportation issued regulations specifically to the Super Bowl but to no other sporting events.

Mr. White, I'm not trying to put you on the spot and say why haven't you brought a case, but I guess I would like to hear back from you specifically telling us what else we can do to put an end to this. If it's anything we could do on this end, obviously we would like to make sure we don't have a repeat of the same problem, as I'm sure would the Commissioner and Eileen Harrington, given their allegiances.

Mr. WHITE. Exactly so.

Mr. KLUG. Can I expect a statement from you?

Mr. WHITE. Fine. I will be happy to do that.

Mr. KLUG. Thanks.

Mr. MANTON. The gentleman's time has expired. The Chair recognizes the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman.

Mr. White, in your testimony you make a strong point that the consumer in these ticket sales should be advised in the context of advertisements before they actually get in their car, go down to the mall or go down to the location and find out that there is an additional charge on the ticket for that convenience. So you suggest the bill, which you generally support, might be changed so that it requires disclosure at the point of advertisement rather than at the point right prior to the sale, after the consumer has already incurred some cost of getting to that point.

Is that the gist of what you have suggested?

Mr. WHITE. I think you have it exactly right.

Mr. TAUZIN. If the bill were changed in that regard to conform with other provisions, as you point out, of FTC regulations here, what does that do in terms of a consumer who may have seen an advertisement, may not have remembered that there was a charge, then showed up and now wasn't told at the point of sale that there's a charge? Should there be a commensurate reminder at the point of sale in addition to any requirements of disclosure in the advertisement?

Mr. WHITE. Again, I believe that's exactly right. My understanding is that in many contexts consumers will ultimately learn the price that they are going to have to pay to buy the tickets they want. Nothing in our suggestion that perhaps that would be useful

information at the beginning is in derogation of the idea that obviously ultimately consumers have to learn the cost of the deal they want to do.

Mr. TAUZIN. They ought to be told at the point of sale.

Mr. WHITE. Yes.

Mr. TAUZIN. When I first heard this issue discussed—I think it was CNN—one of the music groups was complaining that the ticket sale organization was somehow raising the price of their concert inappropriately. I got the impression that the ticket sales organization was in fact setting all of the prices of that concert. That isn't the case, is it? Isn't the ticket sales organization only assessing that part of the ticket sale that represents their service fee for handling the transaction?

Mr. WHITE. I'm going to say that is probably a question you want to ask to some of the individuals that are deeply involved in the relationships. There are, I understand, multiple types of relationships between the ticket organization and the event sponsor and the owner of the hall, if you will.

Mr. TAUZIN. I have been asking a lot of questions since I saw that news report, trying to understand. I've got teenage children who pick up a lot of tickets too. What I generally found out is that the agreement on the ticket price is something negotiated generally between the performing group and the location, the building or the place where it is located, and that the extra charge we are talking about is a charge that is generally agreed upon by contract between the location and the ticket sales organization and that that is very often a competitive contract; there are bids let out for that. Do you know whether that is common practice?

Mr. WHITE. I believe it to be.

Mr. TAUZIN. If that is true and if there are bids let out, apparently there are some marketplace forces at work, which is good. This committee has been very adamant about making sure a marketplace competitive force is at work. If that is true, and I guess we will find out in later testimony, then we are talking only about the extra marginal charge which is arrived at by contractual agreement after a bid process.

The real issue here is making sure the consumer knows that if he buys through this particular method of purchasing that that charge is going to be there and that he knows it in advance and that he knows it when he actually makes the purchase. Is that right?

Mr. WHITE. I think that's generally true. I also know that there are instances in which there are events for which tickets can only be purchased from an intermediary. The circumstance may vary from event to event, but I believe you are correct.

Mr. TAUZIN. Finally, even when tickets are purchased at the site, the site owner may actually assess an additional charge. I'm told that they do that very often because they couldn't get a good enough deal with the performing artist for a part of the action on the ticket price, and so they assess an additional charge for actually conducting the sale or using the premises.

Mr. WHITE. There may well be instances of that.

Mr. TAUZIN. The bill would ensure that consumers know that is going on when they show up at the arena where it's occurring, and that is also a good thing.

I think we have to go vote. I'm going to wrap up, Mr. Chairman. Thank you very much.

Mr. MANTON. The gentleman's time has expired. Thank you, Mr. White, for your testimony. We have 5 minutes to vote on the defense appropriations bill. We will return to our second panel, Mr. Ned Scott Goldstein, vice president and general counsel, Ticketmaster Corporation, in 15 minutes.

Mr. WHITE. Thank you very much, Mr. Chairman.

[Brief recess.]

Mr. MANTON. The subcommittee will come to order. We will continue with our hearing. Panel II, Mr. Ned Scott Goldstein, vice president and general counsel, Ticketmaster Corporation. Good morning.

STATEMENT OF NED S. GOLDSTEIN, VICE-PRESIDENT AND GENERAL COUNSEL, TICKETMASTER CORPORATION

Mr. GOLDSTEIN. Mr. Chairman and members of the committee, my name is Ned S. Goldstein and I am vice-president and general counsel of Ticketmaster Corporation. I appreciate this opportunity to appear before you today to testify on behalf of Ticketmaster Corporation regarding H.R. 4995.

As some of you may be aware, Ticketmaster has been a strong public supporter of this bill from its inception and would like to take this opportunity to congratulate Chairman Dingell, Chairman Swift, and Mr. Condit on the introduction of this bill.

The bill is comprised of two substantive sections. The first section requires disclosure prior to the completion of the purchase of a ticket and the second section requires disclosure on the ticket itself or on a receipt evidencing the purchase of the ticket.

Ticketmaster has built our business by responding to the needs and desires of consumers. By doing so we already practice the types of disclosure that are mandated by this bill.

For example, we have signs at our retail ticket sales outlets informing consumers that their ticket purchase is subject to consumer convenience charges. We have scripts followed by all our sales operators that inform our consumers prior to the completion of any sale of the per ticket customer convenience charge and per order handling charge, if any, associated with the prospective purchase.

Unlike 900 numbers, our numbers are local numbers and if the telephone center is not in a local area, the carrying charge from the local area to the remote area is picked up by Ticketmaster. So there is no cost incurred in terms of placing the telephone call.

Further, we print the convenience charge on the face of the ticket itself.

We have always taken these steps and we will continue to take these steps whether or not we are required to do so by law. This is because we feel the consumer has the right to this information. We are hopeful that the effect of the legislation is to bring the rest of our industry to the standards proposed by Chairman Dingell, practiced by Ticketmaster and deserved by the consumer.

In order for you to better understand Ticketmaster's position in supporting this legislation, it may be helpful to provide you with some brief background on Ticketmaster and its business.

In 1982 Fred Rosen arrived at Ticketmaster as its chief executive officer. At that time Ticketmaster had approximately 25 employees, annual revenues of about $3 million, and a net annual loss of about $2 million. Through a combination of innovation, insight and hard work Ticketmaster has grown from relative obscurity to a small to medium size company having gross annual revenues that averaged during the last 2 years about $180 million, having net annual income during the last 2 years of about $4.5 million, and providing approximately 4,000 people with jobs.

Translating these numbers into ticket sales, last year Ticketmaster sold approximately 50 million tickets out of the more than 1.5 billion tickets to live events sold in the United States.

Since 1982 Ticketmaster has had a policy of printing its customer convenience charges, which are often referred to as service charges, on the face of each ticket it sells.

Further, during this time period Ticketmaster software has been written in such a manner and it has established internal operating procedures such to ensure that a convenience charge is printed on each applicable ticket sold by Ticketmaster.

However, this does not mean that every ticket printed on Ticketmaster's automated inventory control system shows a convenience charge. This is because our clients sell most of their own tickets. The tickets are printed through our system because we provide them with the computerized inventory control system. We provide them with ticket stock quite often that has the Ticketmaster name and logo on the stock even though the box office is selling it itself.

Generally when a box office sells tickets there are no service charges of convenience charges on that ticket unless the box office assesses them themselves. So there are a lot of tickets that say Ticketmaster that may have a service charge or a convenience charge associated with it that is from the box office. There are a lot of tickets that don't have any charges associated with them and they are sold at the box office and they are on Ticketmaster stock.

The major portion of our gross revenues is derived from the customer convenience charges. The amount of these charges is agreed upon in arm's length negotiations between Ticketmaster and the venues, promoters and other entities that are its clients, and they are set forth in written contracts. A good many of these clients are public entities that own or operate arenas, stadiums, performing art centers, and other facilities where entertainment events are held, and the right to provide computerized ticketing services for these entities is subject to a public bid process.

Ticketmaster acts as an agent and an extension of the box office for these facilities. We are not a broker, we are not a scalper, and we do not buy and resell tickets. We act as the agent of the box office and the facility.

We basically sell tickets in two ways. We sell them at conveniently located retail stores, which we refer to as outlets, and by telephone.

All calls to Ticketmaster are answered by live operators. The calls generally come in on local lines which are then connected at our expense, as I stated, to long distance lines carrying the calls to a Ticketmaster telephone center. Approximately 5 out of 6 calls we receive are for information only and not for a sale.

Our outlets are equipped by Ticketmaster but they are operated and managed by the retail stores and by their employees. We also equip the box offices of our clients although they are generally operated and managed by the venue and its employees.

Ticketmaster connects its venue clients, the outlets and the telephone sales centers through a centralized computer, thus providing an inventory control and management system to its clients in equal and simultaneous access to tickets to consumers. As a result of this system, the ticket purchaser may choose to buy a ticket at the box office, at an outlet, or over the phone, but whichever method he or she chooses, that person will receive the best available ticket at the time of purchase.

The convenience charges are paid to Ticketmaster by consumers who choose to utilize our services rather than expend the time and incur the costs involved in traveling to the facility box office. In most cases the box office is open to sell tickets without a service charge. Occasionally concerns about public safety or crowd control will cause a venue to determine not to open its box office for ticket sales, and sometimes venues decide to impose their own service charge on box office sales.

These additional charges at the facility box office as well as parking charges, user fees and facility fees are not assessed by nor do they belong to Ticketmaster. When Ticketmaster is asked to collect these fees it does so as an agent for its clients and provides the money to its clients. It collects it and turns it over to its clients.

Contrary to a popular misconception, Ticketmaster does not advertise in newspapers, magazines, television or radio. It does publish an event guide and calendar of events. Promoters and venues principally advertise their events and the ability to purchase tickets to their events through Ticketmaster. So when you look in the newspaper and you see Ticketmaster's name and logo associated with an event, that is put in there by the promotor or by the venue itself and not by Ticketmaster. The event guide and the calendar of events basically list events. They don't list ticket prices although they do say that there are convenience charges on each of those vehicles.

As stated earlier, the amount of the convenience charges is negotiated by Ticketmaster and its clients. Ticketmaster does not have the unilateral power to set the amount of these charges or to fluctuate the charges depending on the present popularity of a given event. Historically Ticketmaster has set forth these charges on the face of the ticket separate and apart from the face price of the ticket. We believe that this practice of full disclosure may be in part responsible for the notoriety of Ticketmaster's charges. In the entertainment industry where disclosure of costs and profits is not the norm, Ticketmaster believes that it stands alone in its disclosure policies.

In summary, Ticketmaster supports this legislation, intends to continue its practice of disclosing customer convenience charges

whether or not it is required to do so by law, and joins Chairman Dingell in support of this pro-consumer legislation.

I will be pleased to answer your questions.

Mr. MANTON. The Chair would recognize Mr. Dingell, the chairman of the full committee, and ask if he has any questions of the witness.

Mr. DINGELL. Thank you, Mr. Chairman.

First of all, what does Ticketmaster do?

Mr. GOLDSTEIN. Ticketmaster provides a centralized, computerized inventory control system and ticket distribution system principally for venues and for promoters to sell tickets to any number of events that it can, anything from zoos to concerts to museums to cruise ships to golf tee times to baseball to football. Whatever fits.

Mr. DINGELL. Does Ticketmaster disclose all its fees?

Mr. GOLDSTEIN. As I said, our revenue is principally comprised of the customer convenience charges, which we do disclose.

Mr. DINGELL. You said principally.

Mr. GOLDSTEIN. Principally.

Mr. DINGELL. What other income does Ticketmaster have?

Mr. GOLDSTEIN. We negotiate each of our contracts and sometimes there are charges that are called "inside charges" where we might receive from the venue a minimal amount for each ticket processed at an outlet or each ticket processed at a box office. It's not a large amount of money.

Mr. DINGELL. Not a large amount of money: What does that mean?

Mr. GOLDSTEIN. That means that the principal number in our revenue is derived from customer convenience charges. Inside charges vary from a penny to a couple of percentage points on the face value of the ticket itself, and sometimes that's to cover the credit card charge and it's intended to cover the cost of training and the maintenance of the equipment that we supply to the venues.

Mr. DINGELL. Ticketmaster has several licensees. Do your written agreements require the licensees to provide clear disclosure of service and handling charges?

Mr. GOLDSTEIN. No, it does not. Our license agreements are very limited in terms of what they say. They license our computerized software and they license our trade name. I think there is a general standard of professional conduct in the license agreements, but they do not go into the operation of the licensee. It is not a franchise agreement, as I understand it. It just details the trademark and the system.

However, in preparation for this hearing I contacted most of our licensees and asked each of them to supply me with their policy, if they had a policy with respect to disclosure, or if it wasn't in written form, to tell me what it was and to send me samples of the tickets that they print. Each of them told me that they have a policy of disclosing, that they print it on their tickets. One of them said that there may be an instance in one city where because of the tax implications and some other items—I think it's in Atlantic City, New Jersey—they weren't sure if it was separated out. But they all principally do do that.

Mr. DINGELL. Would you provide a copy of the different license agreements that you have, please.

Mr. GOLDSTEIN. I'd be happy to do so.

[The following information was received:]

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____ 1993, by and between Ticketmaster Corporation, an Illinois corporation ("Ticketmaster"), and _____, a _____ corporation ("User") with reference to the following facts:

WHEREAS, Ticketmaster is the owner of certain software systems, accounting procedures and know-how which, in the aggregate, comprise a computerized event ticketing system (the "System");

WHEREAS, Ticketmaster is the owner of and/or claims ownership rights to the name, mark and logo "Ticketmaster" (the "Mark"), which Mark is used in conjunction and identified with the System;

WHEREAS, the System and the Mark are known within the computerized ticketing industry and by the public as connoting a high level of quality and service; and

WHEREAS, User desires to be granted a license by Ticketmaster to use the System and the Mark in connection with User's computerized event ticketing business in the territory described in Exhibit A attached hereto (the "Market Area").

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

1. License. Ticketmaster hereby grants to User an exclusive right and license to use the System and (solely in connection with the System and the provision of computerized ticketing services) the Mark within the Market Area.

User hereby acknowledges that the System and the name "Ticketmaster" are highly regarded in the computerized ticketing industry and by the public, and that Ticketmaster deems it important that all persons using the System or such name operate in a manner consistent with good business practice. Accordingly, User agrees to operate its business in a manner that will not negatively affect the reputation of the System or the Ticketmaster name, including, without limitation thereby, the prompt settlement of accounts and the honoring of all bona fide obligations.

2. Term. The initial term of this Agreement and the license granted hereby shall commence on the date hereof, and shall remain in force, unless terminated earlier in accordance with the provisions hereof, until the _____ (_____) anniversary of the Operational Date. The term of this Agreement shall automatically be extended for _____ additional _____ (__)-year period(s) unless (i) User delivers written notice to the contrary to Ticketmaster no later than one hundred eighty (180) days prior to the expiration of the then applicable term, or (ii) User is in material breach of or default under this Agreement or is not operating the System at the performance level of other licensees of Ticketmaster (other than licensees associated with User).

As used in this Agreement, (A) the term "Operational Date" shall mean the date upon which the System becomes operational in the Market Area or any part thereof, and (B) the term "Operational Year" shall mean the twelve-month period commencing on the

Operational Date and ending on the first anniversary of such date and each twelve-month period thereafter.

3. **Base Payments**. User shall pay to Ticketmaster during the term hereof an annual royalty for the right to use the System and the Mark in the Market Area (the "Base Payment"), payable in advance in equal quarterly installments commencing on the Operational Date. The amount of each annual Base Payment shall be the amount set forth below during each of the indicated Operational Years:

During Operational Year	The Base Payment Shall Be
__ through __	$_____ U.S.
__ through __	$_____ U.S.
__ through __	$_____ U.S.
__ through __	$_____ U.S.
__ through __	$_____ U.S.
__ through __	$_____ U.S.
__ through __	$_____ U.S.

All Base Payments shall be made by User directly to Ticketmaster in United States Dollars in the manner designated by Ticketmaster from time to time during the term of this Agreement, which may include wire transfer into a Ticketmaster bank account.

4. **Additional Payments**. In addition to the Base Payments, User shall pay to Ticketmaster with respect to each Operational Year an additional royalty (the "Additional Payment") equal to (i) the Number of Tickets Sold multiplied by the Per Ticket Amount minus (ii) the aggregate Base Payments actually paid by User to Ticketmaster during that Operational Year. To the extent that in any Operational Year part (i) of the foregoing calculation does not exceed part (ii) thereof, no Additional Payment shall be made by User to Ticketmaster for that Operational Year and Ticketmaster shall not be obligated to return any portion of the Base Payments paid during such Operational Year or to credit any amount against Additional Payments payable in any succeeding Operational Year. As used herein "Number of Tickets Sold" shall mean for any Operational Year the number of tickets printed or produced by or through the System in the Market Area, whether at remote ticket outlets, at facility box offices, at User locations or elsewhere, and any other tickets sold or distributed by User in the Market Area other than by or through the System or using the Mark. Further, as used herein, the "Per Ticket Amount" shall be the amount set forth below during each of the indicated Operational Years:

During Operational Years	The Per Ticket Amount Shall Be
1 through 3	$___.___
4 through 6	$___.___
7 through 9	$___.___
10 through 12	$___.___
13 through 15	$___.___
16 through 18	$___.___
19 through 20	$___.___

In the event that this Agreement is terminated for any reason prior to its expiration, the period commencing on the day following the end of the prior Operational Year and ending on the date of termination shall be deemed to be an Operational Year for purposes of this Agreement.

Additional Payments for each Operational Year shall be calculated and paid by User to Ticketmaster in United States Dollars on a quarterly basis, within fifteen (15) days following any quarter during an Operational Year in which the aggregate per

ticket royalty for such year exceeds the Base Payment for such year and in each quarter thereafter during any such year. All Additional Payments shall be made by User directly to Ticketmaster in the manner designated by Ticketmaster from time to time during the term of this Agreement, which may include wire transfer into a Ticketmaster bank account.

Within fifteen (15) days after the end of each month of the term hereof, User shall deliver to Ticketmaster a report of all tickets sold, printed, produced and distributed by User in the Market Area during such month, which report shall contain such information as may be necessary for Ticketmaster to calculate Additional Payments and such other information as Ticketmaster may reasonably request. Ticketmaster shall be entitled upon reasonable notice to User to access to the books and records of User during User's normal business hours and at User's premises for purposes of confirming and computing the amounts of Additional Payments payable hereunder; provided, however, that access to such books and records by Ticketmaster shall not unduly disrupt normal business operations of User.

5. Equipment.

Ticketmaster hereby agrees to sell to User, and User hereby agrees to purchase from Ticketmaster, the equipment described on Exhibit B attached hereto (the "Equipment"). The purchase price of the Equipment shall be as set forth on said Exhibit B, and shall be payable by User to Ticketmaster in the manner set forth on said Exhibit B.

ALL IMPLIED WARRANTIES EXISTING BY OPERATION OF LAW, INCLUDING SPECIFICALLY ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED AND NEGATED BY THE EXPRESS WARRANTIES PROVIDED HEREIN.

6. Installation and Training. Ticketmaster shall assist User with respect to the installation of the System, and with respect to the initial training of User's necessary personnel (the "Installation Services"). In consideration of the Installation Services, User shall pay to Ticketmaster a fee equal to the greater of $_____ (U.S.) or the actual amount of travel, hotel, personnel and related expenses incurred by Ticketmaster and its affiliates and consultants in connection with the performance of the Installation Services. One-half ($_____) of the Installation Services fee shall be payable by User to Ticketmaster upon execution of this Agreement and one-half ($_____) of the Installation Fee shall be payable by User to Ticketmaster immediately upon delivery of the System.

7. Title.

(a) Title, beneficial interest and all ownership rights to the System, the Mark and all related materials furnished by Ticketmaster and licensed under this Agreement shall remain in Ticketmaster. User hereby acknowledges that the System, the Mark and all related materials furnished by Ticketmaster hereunder are claimed by Ticketmaster to be Ticketmaster's proprietary information and trade secrets, whether or not any portion thereof is, or may be, validly copyrighted, patented, trademarked or otherwise protected.

(b) User's rights in and to the System and the Mark furnished by Ticketmaster as a result of this Agreement may not be assigned, licensed or otherwise transferred voluntarily, by operation of law or otherwise, without the prior written consent of Ticketmaster.

(c) Ticketmaster and/or User may add to, delete from or modify the System and all related materials furnished by Ticketmaster hereunder in any manner, but no such changes, however

extensive, shall reduce Ticketmaster's title to the System. Any improvements made by User shall be and remain the confidential, proprietary property and information of User except that Ticketmaster shall retain all proprietary rights in the underlying System as so improved and User shall not have any right to use the System as so improved without the prior written consent of Ticketmaster (except pursuant to this Agreement).

8. Use of the System and Mark.

(a) The System (including any changes thereto made by or on behalf of Ticketmaster or User) and all related materials may be used for, by or on behalf of User only in connection with any computer equipment which User uses solely for, or solely in connection with, computerized ticketing at the facility locations and remote terminal locations within the Market Area. The System may not be utilized in connection with any additional physical computer facilities (or other computers), for any other reason or by or for any other person, firm, corporation or other organization, without the prior written consent of Ticketmaster.

(b) User agrees that the Mark shall be the sole mark and name utilized by it in connection with the System and the operation of its ticketing business.

(c) The Mark shall be used by User in accordance with such quality control standards as Ticketmaster may from time to time prescribe with respect to products and services in connection with which the Mark is utilized. Further, User shall only use the Mark together with such notations as Ticketmaster may from time to time prescribe for purposes of advising the public of service mark, trademark and similar protection. User shall cease all use of the Mark ten (10) days after notice from Ticketmaster that User has failed to comply with any such standard unless, within such ten (10)-day period, User corrects such failure to the satisfaction of Ticketmaster.

(d) Neither User nor any of its employees, agents or representatives shall reproduce, duplicate or otherwise copy the System or any related materials furnished by Ticketmaster hereunder or any portion thereof, except for internal use directly with the System. All such materials and any copies thereof shall be returned by User to Ticketmaster immediately following termination or expiration of this Agreement.

9. Warranties. Ticketmaster warrants to User that it is the owner of the System and the Mark (or claims ownership rights to the Mark) and has the right to grant this license to User. Ticketmaster further warrants that the System to be installed in the Market Area will be substantially the same as, and will be capable of performing (if used with the same equipment and subject to limitations based on size and capacity) as, the basic system currently being operated by Ticketmaster and its affiliates in _____. The System does not include certain custom enhancements such as direct line credit card authorization, disaster recovery, off-line archiving of accounts, nitrun, remote VAXNET software and the TM fraud program, all of which may be purchased separately. IN THE EVENT OF ANY BREACH OF THE WARRANTY CONTAINED IN THE PREVIOUS SENTENCE, TICKETMASTER'S SOLE RESPONSIBILITY SHALL BE TO USE ITS BEST EFFORTS TO CORRECT THE SYSTEM SO THAT IT PERFORMS IN ALL MATERIAL RESPECTS IN THE MANNER DESCRIBED ABOVE. THE WARRANTIES CONTAINED IN THIS PARAGRAPH 9 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

User hereby warrants to Ticketmaster that (i) it is a duly organized and validly existing _____ in good standing under the laws of the State of _____; (ii) it has all

necessary power and authority to execute and perform this Agreement in accordance with its terms; (iii) the execution and performance of this Agreement by it will not breach, constitute a default under or violate any of User's governing instruments or any agreement to which it is a party or by which its assets may be bound; (iv) this Agreement is enforceable against User in accordance with its terms; and (v) no approvals or consents of any third party (including any government agency) is necessary in order for User to execute and deliver this Agreement and to perform hereunder.

10. Breach of Warranty.

(a) Ticketmaster shall, at its expense, defend any action brought against User to the extent such action is based on a claim that the use of the System or the Mark directly infringes any service mark, trademark, copyright or patent ("Infringement Action") and Ticketmaster shall pay any and all costs, expenses, damages, recoveries, deficiencies and attorneys' fees awarded against User in any Infringement Action; provided that (i) Ticketmaster's obligations under this Paragraph 10(a) are conditioned on User's promptly notifying Ticketmaster of any Infringement Action (and all claims relating thereto); and (ii) Ticketmaster shall have sole control of the defense and all negotiations for compromise of any Infringement Action. Ticketmaster assumes no liability for the modification of the System, or any part thereof, unless such modification is made by Ticketmaster. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF TICKETMASTER AND THE EXCLUSIVE REMEDY OF USER FOR SERVICE MARK, TRADEMARK, COPYRIGHT OR PATENT INFRINGEMENT.

(b) User's remedy for any breach of warranty shall be limited solely to the remedies provided in this Agreement. All other liability, either in contract or tort, is expressly disclaimed, waived and negated. In no event shall Ticketmaster be liable to User for any consequential or exemplary damages resulting from a breach of any warranty contained in this Agreement or any implied warranty or any requirement existing and applicable under the law, which contrary to the intention of the parties hereto, the law states cannot be or is not disclaimed, waived or negated.

11. Restrictive Covenants.

(a) User recognizes and acknowledges that the System and all related materials furnished to User by Ticketmaster hereunder represent highly confidential, proprietary information of Ticketmaster and constitutes a valuable, special and unique asset of and to the business of Ticketmaster. User covenants and agrees that, during and after the term hereof, no information, source materials, design specifications, programs, flow charts, listings, magnetic tapes, disks, punched cards, documentation or other supporting or related materials and information of any nature or description whatsoever relating to the design and operation of the System, or any portion thereof, are made available or disclosed by User, or any of its officers, directors, employees, agents or representatives, directly or indirectly, to any other person, firm or corporation, for any reason or purpose whatsoever or, directly or indirectly, used by User or any of its employees, agents or representatives; provided, however, that User may disclose pertinent portions of the System to those of its employees, agents or representatives who have a need to have access to such portions of the System in order to enable User to use the System within the Market Area, and further provided that the foregoing restrictions shall not apply to information within the public domain. Ticketmaster shall have the right to bring legal action to prevent a breach or threatened breach of this confidentiality agreement and to pursue any other legal or equitable remedies for any such breach or threatened breach, and User shall reimburse Ticketmaster for all costs and expenses, including but not limited to attorneys' fees, incurred by Ticketmaster with respect thereto. User shall notify

Ticketmaster of any such breach immediately upon discovery of such breach. Additionally, User shall use the System only in accordance with the terms and conditions hereof; and after the expiration of the term hereof, or earlier termination of this Agreement, User shall: (i) cease all use of the System, the Mark and all related materials furnished hereunder by Ticketmaster, (ii) return to Ticketmaster all information, source materials, design specifications, programs, flow charts, listings, magnetic tapes, disks, punched cards, documentation and other supporting or related materials relating to the System (and copies thereof), (iii) warrant that all such documentation and materials (and copies thereof) have been returned to Ticketmaster or have been destroyed, and (iv) warrant that any and all use of the Mark has ceased.

(b) During the term of this Agreement, neither User nor any of its parents, subsidiaries, affiliates, successors or assigns shall, directly or indirectly, as principal, agent, shareholder, partner, joint venturer, investor or in any other capacity or by any other means whatsoever, (i) compete with Ticketmaster or its affiliates within the Market Area in the computerized ticketing business or (ii) solicit the employment by User or any of its parents, subsidiaries, affiliates, successors or assigns of any employee of Ticketmaster or its affiliates.

(c) User acknowledges that the remedy at law for any breach or threatened breach of the agreements and covenants set forth in this Paragraph 11 will be inadequate, and Ticketmaster shall be entitled to preliminary and permanent injunctive relief in any court of competent jurisdiction, without the requirement of posting bond or any other condition precedent thereto, for any breach or threatened breach of the agreements and covenants contained in this Paragraph 11. Such remedy shall be in addition to, and not in limitation of, any other remedy available to Ticketmaster at law, in equity or otherwise, and may be obtained by Ticketmaster notwithstanding any assertion by User that Ticketmaster's claims to proprietary rights in its confidential information is invalid or unenforceable.

(d) Termination or expiration of this Agreement shall not terminate the continuing confidentiality obligations imposed upon User, its employees, servants and agents by the terms of this Paragraph 11.

(e) At Ticketmaster's request, User shall require each person permitted access to any of the confidential information to execute a confidentiality agreement in such form and containing such terms as Ticketmaster shall determine.

12. <u>Termination</u>.

(a) This Agreement may be immediately terminated by Ticketmaster if:

(i) User shall dissolve or commence winding up its activities to effect dissolution, liquidation or termination, or shall make an assignment for the benefit of creditors, or shall admit, in writing, its inability to pay its debts as they become due, or shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file any answer admitting or not contesting the material allegations of a petition filed against it in any such proceedings, or shall seek, consent to or acquiesce in the appointment of any trustee, receiver or liquidator of User or of all or any substantial part of the properties of User;

(ii) User (or any of its officers, directors, employees, agents or representatives) shall breach, or threaten to breach, any of the confidentiality obligations of User set forth in Paragraph 11 hereof; or

(iii) User shall fail to pay when due any amounts owing Ticketmaster under, or to observe or perform any terms or conditions of, this Agreement (other than Paragraph 11); provided, that any such failure shall continue for a period of seven (7) days after Ticketmaster has given written notice thereof to User.

(b) This Agreement may be immediately terminated by User if Ticketmaster shall dissolve or commence winding up its activities to effect dissolution, liquidation or termination, or shall make an assignment for the benefit of creditors, or shall admit, in writing, its inability to pay its debts as they become due, or shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file any answer admitting or not contesting the material allegations of a petition filed against it in any such proceedings, or shall seek, consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Ticketmaster or of all or any substantial part of the properties of Ticketmaster.

(c) Upon any such termination, (i) any past due or currently due payments (including Additional Payments for the period from the beginning of the then current License Year through the date of termination) shall become due and payable (or, if applicable, prepaid Base Payments for the remainder of the current License Year quarter shall be reimbursed), and (ii) this Agreement and the license granted hereby shall forthwith be revoked and of no further force or effect except as stated otherwise herein. Ticketmaster's and User's right to terminate this Agreement shall be in addition to and without prejudice to any other remedies such party may have.

(d) Immediately upon any such termination, User shall surrender to Ticketmaster, and Ticketmaster shall have the right peacefully to take, possession of the System, and User shall further cease to use the Mark. Ticketmaster shall thereafter own and hold the System and the Mark free of any claim or interest of User. Without limiting the generality of the foregoing, User shall immediately after any such termination legally change its name so that its name shall no longer include the word "Ticketmaster" or any derivation thereof. User shall indemnify and hold Ticketmaster harmless from and against any claim, loss, expense (including reasonable attorneys' fees) or liability whatsoever resulting from, due to or arising by reason of any misuse of the System or Mark by User in any manner.

13. Enhancements and Support.

(a) In the event that the System shall, at any time during the term of this Agreement, fail to perform in the manner warranted by Ticketmaster in Paragraph 9 hereof, Ticketmaster shall, at no charge to User, correct the System in the manner provided in said Paragraph 9.

(b) In the event that Ticketmaster shall, at any time during the term of this Agreement, develop and complete testing of

enhancements to the version of software comprising a part of the System then being used by User, and Ticketmaster shall make such enhancement available to its non-affiliated licensees on a general basis, Ticketmaster shall also make such enhancement available to User in consideration of the payment by User of any and all out-of-pocket expenses incurred by Ticketmaster (including, without limitation thereby, costs of materials and personnel) in connection with making such enhancement available to User, as well as the costs of all necessary new equipment.

(c) In the event that Ticketmaster shall, at any time during the term of this Agreement, offer to User, and User shall elect to receive, an upgrade to or improved version of the software used in the System, the implementation of which would require a conversion of User's database, User shall pay to Ticketmaster the sum of $_____ U.S. therefor, and Ticketmaster shall effect such conversion for and on behalf of User.

(d) In the event that User shall, at any time during the term of this Agreement, request that Ticketmaster develop custom enhancements to the System to meet certain specific performance criteria reasonably requested by User, Ticketmaster shall use its reasonable efforts to cause such custom enhancements to be developed by its programmers in consideration of the payment by User to Ticketmaster of the prevailing rate then being charged by Ticketmaster to its other non-affiliated licensees.

(e) In addition to any other fees payable by it to Ticketmaster pursuant to this Paragraph 13, User shall be responsible, and shall immediately reimburse Ticketmaster upon invoice, for any and all expenses (including travel) incurred by Ticketmaster's employees, agents and representatives pursuant to or in connection with Ticketmaster's performance under Paragraphs 13(b), (c) and (d) above.

14. **Documentation**. Ticketmaster will supply User with documentation which will enable User, after the initial training of its personnel, to operate the System.

15. **Equipment**. During the term of this Agreement, User shall have the right to purchase all equipment it may require from time to time to be used entirely or in material part with the System from or through Ticketmaster. The cost of any such equipment which is manufactured by a party other than by Ticketmaster shall be at Ticketmaster' cost plus ____ percent (____%). The cost of any such equipment manufactured in whole or in part for or by Ticketmaster shall be at Ticketmaster's then current market rate to its non-affiliated licensees for such equipment. The cost of delivering and installing such equipment shall be borne solely by User.

16. **Indemnification**. User shall indemnify and hold Ticketmaster, and its subsidiaries, affiliates, successors, assigns, officers, directors, employees, representatives and agents, harmless from and against any and all losses, liabilities, damages, claims, actions, causes of action and expenses (including reasonable attorneys fees) that said indemnified parties may incur or be responsible for as a result or by virtue of the operation of User, including, without limitation thereby, User's use of the System, but excluding those costs, expenses, damages, recoveries, deficiencies and attorneys fees awarded in any Infringement Action pursuant to Paragraph 11(a) above.

17. **Assignment**. User may not assign its rights, duties, and/or obligations hereunder, nor may the System, the Mark or any

materials furnished by Ticketmaster hereunder be transferred, assigned, sublicensed or otherwise disposed of by User, without the prior written consent of Ticketmaster.

18. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective, successors and assigns.

19. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties hereto relative to the subject matter hereof, and supersedes any and all prior agreements, written or oral, between the parties relating to such subject matter. No modifications or amendments of any of the terms hereof shall be valid or binding unless made in writing and signed by Ticketmaster and User.

20. Waiver. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

21. Attorneys' Fees. In case of any action or proceeding to compel compliance with, or for a breach of, the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party all costs of such action or proceeding including, but not limited to, reasonable attorneys' fees.

22. Notices. All notices which are required or permitted hereunder shall be sufficient if given in writing and delivered personally, by telecopy or by registered or certified mail, postage prepaid, addressed to the party receiving such notice at the following address or at such other address as may be requested in writing by either party pursuant to this Paragraph 22:

If to Ticketmaster, to: Ticketmaster Corporation
3701 Wilshire Boulevard
7th Floor
Los Angeles, California 90010
Attn: Fredric D. Rosen
Ned S. Goldstein

If to User, to: _____
_____
_____
Attn: _____

23. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect. Further, should any provision of this Agreement be deemed unenforceable by virtue of its scope, such provision shall be deemed limited to the extent necessary to render the same enforceable.

24. Law to Govern. The validity, construction and enforceability of this Agreement shall be governed in all respects by the laws of the State of Illinois, without regard to its conflict of laws rules. Any legal proceeding or other action taken or to be taken by any of the parties hereto relative to this Agreement or the transactions contemplated hereby, or to enforce or interpret the terms and conditions of this Agreement, shall be

instituted in a state or Federal court located in Cook County, Illinois. The parties hereto hereby irrevocably consent to the jurisdiction of any such court and irrevocably waive, to the fullest extent that they may effectively do so, the defense of an inconvenient forum to the maintenance of such proceeding or action. The parties hereto agree that a final judgment, from which no further appeal may be taken or from which no further petition for review may be filed, in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgement or in any other manner provided by law.

25. **Headings**. The headings of paragraphs in this Agreement have been inserted for the convenience of reference only and shall in no way restrict or otherwise modify the terms of this Agreement.

26. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but each of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

TICKETMASTER CORPORATION, a _____ corporation	**[*USER*]**, a _____ corporation
By:_____	By:_____
Title:_____	Title:_____

AGENCY AGREEMENT

AGENCY AGREEMENT, dated as of the 1st day of August, 1990, by and between Ticketmaster-New York, Inc., a Delaware corporation ("Agent") and NEW JERSEY SPORTS & EXPOSITION AUTHORITY d/b/a MEADOWLANDS SPORTS COMPLEX, a Body Corporate and Politic of the State of New Jersey ("Principal").

W I T N E S S E T H:

In consideration of the mutual understanding of the parties hereto, it is agreed as follows:

1. Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below unless the context otherwise requires:

(a) Attraction: A sporting event or other entertainment feature to be held at the Facility in respect of which (i) Principal has authority to sell Tickets to the public, (ii) Principal makes Tickets available generally to the public, and (iii) Principal sells or offers to sell Tickets at the Facility Box Office.

(b) Customer Service Charge: The amount charged to a Ticket purchaser by Agent for the use of the TM System.

(c) Facility: Meadowlands Sports Complex, or any other location which may hereafter be employed or used by Principal for the conduct of its business (including the performance of Attractions) during the term of this Agreement.

(d) Facility Box Office: The Ticket locations at the Facility which are operated by Principal.

(e) Hardware: All of that certain computer hardware, communications equipment, terminals and hook-ups listed with particularity on Exhibit A hereto.

(f) Commissions: The amounts charged to Principal by Agent for services rendered by Agent under this Agreement.

(g) Outlet: A retail Ticket selling agency where Tickets for an Attraction are made available through the TM System and are offered for sale to the public.

(h) Software: All the computer software, including all upgrades, new releases, new versions and modifications thereto during the term of this Agreement, which Principal shall have access to in connection with the sale of Tickets through the TM System.

(i) Telephone Sales: All sales by telephone of Tickets by Agent.

(j) TM System: The Hardware, Software, related procedures and personnel, repair and maintenance services established and maintained by Agent for the purpose of selling, auditing and controlling the sale of Tickets for Attractions.

(k) Ticket: A printed evidence of the right to occupy space at or to attend an Attraction.

2. Appointment as Agent and Trustee. Principal hereby appoints Agent to:

(a) Act as Principal's agent to arrange to make Tickets available for sale on the TM System and to sell Tickets on behalf of Principal for cash, check or on credit for Principal's account through the TM System.

(b) Receive, collect, hold and remit (net of all Commissions and credit card sales charges), as trustee of the proceeds of Principal's Ticket sales made by Agent, the proceeds of Principal's Ticket sales.

(c) Subdelegate to Outlets such agency and trust authority to sell Tickets and to receive, collect, hold and remit the proceeds of Principal's Ticket sales made by them.

(d) Make Tickets available for sale through the telephone Ticket order processing and sales functions of the TM System.

Agent hereby accepts its appointment as Principal's agent and as trustee of the proceeds of its Ticket sales subject to and in accordance with the following terms and conditions; and, in connection with the acceptance of its appointment, Agent agrees to maintain, during the entire term of this Agreement, an outlet network acceptable to Principal.

3. License of Hardware and Software. During the term of this Agreement, Agent shall provide to the Principal and Agent hereby grants to Principal (for the term of this Agreement), a license to operate at Giants Stadium and Brendan Byrne Meadowlands Arena the Hardware and on-line and off-line access to the Software and with respect to such Software, all upgrades, new releases, new versions and modifications to said Software to which Agent has access during the term of this Agreement shall be made available to Principal as soon as it is practicable and as soon as the same can be used by the TM System in the New York, New Jersey metropolitan area. The Hardware and Software shall at all times be and remain the sole and exclusive property of Agent, shall be used by Principal only for the direct, in-person (non-telephonic) sale and issuance of Tickets to the public, for the control of Principal's Ticket inventory and for the generation of accounting and sales reports, management information and other data related to Ticket sales, and Principal shall have no right, title or interest therein or thereto except as a licensed user thereof.

4. Term of Agreement. The initial term of this Agreement shall be for a period of five (5) years from the date of the execution hereof. Thereafter, at Principal's sole discretion, the term of this Agreement shall be extended for [redacted] additional three (3) year periods ~~unless~~ if Principal notifies Ticketmaster in writing, not less than ninety (90) [redacted] days prior to the end of the initial term or the then current renewal term, of its intention [redacted] to renew this Agreement. The same terms, conditions, and pricing (as annualized on a per contract year basis) set forth herein shall apply during any extension term of this Agreement, including, Principal's continued right to receive the Guaranteed Sales Allowance in the same annual minimum amounts as is set forth in Section 6(b) below and Customer Convenience Charges of at least the same amounts as are in existence as of the last year of the current term hereof.

5. Compensation to Agent. In consideration of Agent's providing to Principal and licensing Principal to operate the Hardware and Software and in consideration of Agent's continuing the ticket selling, repair, maintenance and other services to be performed pursuant to this Agreement, Agent shall be entitled to receive the following fees and commissions from Principal and/or the following charges from Ticket purchasers:

(a) Commissions. Agent shall be entitled to charge and receive from Principal, for Attractions scheduled at the Facility, the following Commissions on all Tickets sold by Agent through the TM System at all Outlets:

(1) For Concerts - a Commission of $0.15 per Ticket on each concert Ticket sold by Agent at an Outlet during the term of this Agreement.

(2) For all other attractions - a Commission of $0.00 i.e., (no charge) per Ticket for each non-concert Ticket sold by Agent at an Outlet during the term of this Agreement.

(b) Customer Service Charges - Outlets and Telephone Sales. Agent shall be entitled to charge and receive from Ticket purchasers, for Attractions scheduled at the Facility, the following Customer Service Charges on all Tickets sold by Agent through the TM System at all Outlets and by Telephone Sales, and in connection with Telephone Sales, to assess and receive from Ticket purchasers the following Handling Charges, and Principal consents to the assessment of said charges:

Type of Attraction Outlets	Initial Customer Convenience Charge	Permitted Increases Convenience Charge
Concerts		
Arena	$2.75	$0.25 each contract year commencing August 1, 1991.
Stadium	$3.00	$0.25 each contract year commencing August 1, 1991.
Ringling Bros. Circus & Disney on Ice	$1.25	Such increases as the Circus and Ticketmaster may agree to from time to time, or as may be agreed upon by the parties hereto, but in no event less than the current charge.
Muppets	$2.00	$0.25 every other contract year commencing on August 1, 1992.
Sporting Events Ice Capades & Globetrotters	$2.25	$0.25 every other contract year commencing on August 1, 1991 for all priced tickets.
Other Attractions	$2.75	$0.25 every contract year commencing August 1, 1991.

Type of Attraction	Initial Customer Convenience Charge	Permitted Increases Convenience Charge
Telephones		
Concerts		
Arena	$4.00	$0.25 each contract year commencing August 1, 1991.
Handling Charge	$1.50 *	
Stadium	$4.00	$0.25 each contract year commencing August 1, 1991.
Handling Charge	$2.00 *	
Ringling Bros. Circus & Disney on Ice	$1.75 with a cap of $7.00 per order	Such increases as the Circus and Ticketmaster may agree to from time to time, or as may be agreed upon by the parties hereto, but in no event less than the then current charge.
Handling Charge	$0.00 *	
Muppets	$2.50	$0.25 every other contract year commencing August 1, 1992.
Handling Charge	$1.50 *	
Sporting Events Ice Capades & Globetrotters	$3.00	$0.25 every other contract year commencing August 1, 1991 for priced tickets.
Handling Charge	$1.50 *	
Other Attractions	$4.00	$0.25 every contract year commencing August 1, 1991.
Handling Charge	$1.50 *	

* HANDLING CHARGES may increase by $0.25 at the beginning of the fourth contract year and by mutual consent at any other time. Notwithstanding the foregoing, all actual postal increases may be added at the time they may occur.

(c) Credit Card Sales - On all credit card sales of Tickets (through MasterCard, Visa or any other credit card approved by Agent in its sole discretion) sold by Principal at the Facility Box Office or by Agent by telephone, Principal agrees to pay the following charges relative to the face value of such Tickets as are charged to MasterCard or Visa:

(1) $2% of the face value of the Ticket for all Attractions promoted or co-promoted by Principal.

(2) 3% of the face value of the Ticket for concerts and for all Attractions which Principal does not promote or co-promote.

With regards to the face value of such Tickets as are charged to other credit cards approved by Agent, Principal agrees to pay the credit card company charge as long as it does not exceed the above amounts being charged for MasterCard and Visa. With respect to any other credit cards, Principal agrees to pay such amount as is agreed upon by Agent and Principal.

(d) Group Sales and Season Ticket Inquires. All request for "Group Sales" (orders for 15 or more Tickets for any Attraction) and "Season Tickets" (Tickets for multiple of Attractions specifically packaged for customers by the Principal) shall be referred by Agent to the Principal. It is also understood that all "Season Tickets" and "Group Sales" will be sold directly by Principal and that Principal will not be obligated to pay Agent any Commissions on such sales.

6. Compensation to Principal.

(a) One-Time Incentive Payment. Agent shall pay Principal a one-time incentive payment of $1,000,000 upon execution of this Agreement. Said amount shall be used in any manner that Principal, in its sole discretion, deems appropriate.

(b) Principal's Participation: Guaranteed Sales Allowance. Ticketmaster shall guarantee to Principal from sales of Tickets at the Outlets and by telephone, a minimum Sales Allowance Advance of $1,000,000.00 per annum. Said Advance shall be payable in the following amounts on the following dates: $1,500,000 upon execution of this Agreement; $1,250,000 on August 1, 1991; $1,250,000 on August 1, 1992; and $1,000,000 on August 1, 1993. The following amounts shall be credited against said Advance:

Outlets:	Concerts at Arena	$0.75 per Ticket
	Concerts at Stadium	$0.85 per Ticket
	Sporting Events - Ice Capades & Globetrotters	$0.50 per Ticket
	All Other Attractions	$0.75 per Ticket

For each $0.25 per Ticket increase in the Customer Service Charge at the Outlets for the above captioned Attractions, Principal's Sales Allowance shall be increased by $0.05 per Ticket.

Telephone Sales:*	Concerts at Arena	$1.25 per Ticket
	Concerts at Stadium	$1.25 per Ticket
	Sporting Events - Ice Capades & Globetrotters	$0.75 per Ticket
	All Other Attractions	$1.25 per Ticket

* Principal shall additionally be entitled to fifty percent (50%) of the then applicable Handling Charge on all Telephone Sales of Tickets which are printed and picked up at the Facility Box Office window(s) (i.e, will call).

For each $0.25 per Ticket increase in the Customer Service Charge for Telephone Sales for the above captioned Attractions, Principal's Sales Allowance shall be increased by $0.10 per Ticket.

At such time, if any, as the above amounts derived from Outlet Sales and Telephone Sales, including Handling Charges, reach $1,000,000 in any contract year, then, for the remainder of that year said Sales Allowance payments shall be paid to Principal weekly, as earned, concurrently with the weekly settlements conducted under Section 18 below.

(c) Advertising Allowance. Agent shall pay Principal an Advertising Allowance of $100,000 per year during each year of the term of this Agreement. Said Advertising Allowance shall be payable in arrears in four (4) equal quarterly payments of $25,000 each. The first such payment is due and payable on October 31, 1990 and the remaining payments are due and payable on the last day of each January, April, July and October during the remainder of the term hereof. Said Allowance shall be used in any manner that Principal, it its sole discretion, deems appropriate.

7. Exclusive Rights.

(a) Principal hereby grants to Agent, and Agent accepts from Principal, the exclusive right during the term of this Agreement to make all sales, at outlets and/or by telephone sales of Tickets, to Attractions.

(b) It is agreed and understood that neither Agent nor Principal will guarantee or are hereby guaranteeing that any minimum or fixed number of Tickets will be sold through the TM System for any Attraction.

8. Central Computer Facility; Conduct of Telephone Sales.

(a) Agent shall, at its sole expense, establish and maintain a central computer facility at such location as Agent shall deem necessary for the operation of the TM System. The central computer facility will be in operation 15 hours a day from 8:00 A.M to 11:00 P.M. during each and every day of the year, and will be properly staffed by Agent to perform, to the satisfaction of Principal, all ongoing licensed user assistance, maintenance and repair services required to be performed by Agent under this Agreement. In addition to the foregoing, Agent also agrees to provide telephone ticket sales services on behalf of Principal with respect to Attractions and, in that regard, Agent shall receive telephone calls for Ticket sales between the hours of 9:00 A.M. and 9:00 P.M. six days a week and from 10:00 A.M. to 7:00 P.M. on Sundays, and Agent will properly staff such telephone service so as to cause it to perform, to the satisfaction of Principal, ongoing licensed user assistance with respect to Ticket sales.

9. Maintenance and Repairs.

(a) Agent agrees that installation costs with respect to the Hardware shall be borne by and be the sole responsibility of Agent and that the cost of all telephone line connections between the central computer facility and the Facility, and all monthly telephone line costs with respect to the operation of the TM System between the Facility and the central computer facility, shall be borne solely by Agent. Agent agrees to provide ordinary and routine maintenance and repair of the TM System at the Facility at no cost to Principal, provided that such maintenance or repair is not necessitated by the negligence of Principal, its employees, agents or representatives. Agent represents and warrants that a sufficient number of service and repair personnel will be on duty at the central computer facility to meet the reasonably anticipated service needs of all licensed users of the TM System from time to time. In the event of any breakdown or malfunction in the operation of the Hardware, or difficulties encountered in connection with access to the Software, Principal agrees to promptly notify Agent of any such malfunction to assist Agent in performing its obligations hereunder. In the event of any emergency, Agent further agrees to respond to such emergency as quickly as possible to provide Principal with repair services.

(b) Nondurable operational supplies which are used at the Facility in connection with the operation of the TM System, consisting of line printer paper and printer ribbons, shall be paid for by Principal, and Principal shall be responsible for maintaining adequate supplies thereof to assure continuous operations at the Facility.

10. Limitation of Liability. In the event of any breach of this Agreement by Agent which may be caused by the malfunction of the Hardware or Software or by Agent's failure to provide required maintenance service and to keep the TM System in operating condition, the limit of any claim of loss by Principal shall be no greater than the proven financial loss sustained by virtue of such

breach. Occasional short-term interruptions of service which are not unreasonable under comparable industry standards shall not be cause for any liability or claim against Agent hereunder, provided that Agent fulfills its responsibilities as provided in Section 9(a) above.

11. Training of Box Office Employees. Principal shall staff a Facility Box Office with its employees for the proper operation of the TM System for Ticket sales made through the Facility Box Office. Agent shall, at its cost, initially train a sufficient number of Principal's employees who shall be reasonably necessary for the staffing of the Facility Box Office and for operation of the TM System at the Facility as needed and agrees to provide additional training to other employees of Principal to the extent such training is necessary as a consequence of changes in, or a modification to, the Hardware or Software or in Agent's method of operation. To the extent that any change in Facility Box Office personnel by the Principal requires additional training beyond that initially contemplated hereunder, Agent shall, at its cost (except travel and related expenses which shall be incurred by Principal), train such replacement or new personnel as may be reasonably requested by Principal.

12. Box Office Ticket Pick-Up. At all times during the term of this Agreement, Principal shall maintain a designated Facility Box Office window(s) for the pick-up of tickets purchased through the TM System pursuant to Telephone Sales.

13. Installation. Agent shall, to facilitate Ticket sales on behalf of Principal in a manner compatible with the objectives of this Agreement and with due consideration of the needs of Principal, proceed in good faith and with due diligence to install the Hardware and to provide Principal with access to the Software on August 1, 1990.

14. General Responsibilities of Principal. During the term of this Agreement, Principal shall designate in writing to Agent an individual who will serve as Principal's representative with respect to the resolution of disputes which may arise in connection with the administration of this Agreement. Principal initially designates Michael Rowe as Principal's representative in such capacity.

15. Outlets; Audit of Sales. Principal agrees to allow to be made at all Outlets and by telephone the sale of all Tickets made available for each Attraction at the Facility. At all times during the term of this Agreement, Principal shall have the right at its own expense to audit Ticket sales by Agent through Outlets and Telephone Sales to assure Agent's compliance with the terms of this Agreement. Principal shall not bear any cost with respect to the operation of Outlets.

16. Attraction Set-Up. In advance of all Ticket sales, Principal shall furnish Agent with all necessary information with respect to the proposed arrangement of the Facility for all Attractions, including, without limitation, seating layout, Ticket structure, permissible discounts, Ticket header information, color logos, entry information and such other information as is necessary for the proper sale of Tickets at the Facility Box Office, at all Outlets and by telephone. Included in such information shall be the Principal's prepared disclaimer respecting refunds, the purchaser's assumption of risk of injury, and such other relevant information as Principal shall deem necessary or appropriate. Notwithstanding anything contained herein to the contrary, Agent shall have no responsibility and Principal shall indemnify Agent against all liability, claims or causes of action resulting from the inaccuracy of any information furnished by Principal pursuant hereto.

17. Delivery of Tickets; Advertising.

(a) With respect to Ticket stock, (i) Principal shall supply, at its expense, blank Ticket stock for all "Season Tickets" which Agent agrees to print at its expense, and (ii) Principal shall pay for all blank Ticket stock sold at the Facility Box Office and shall have the right to sell advertisements on such Ticket stock; provided, however, that Agent shall provide blank Ticket stock to Principal at Agent's expense in the event that Principal allows Agent to sell advertising with respect to all of such blank Ticket stock. Principal shall be responsible for the security of all Ticket stock in its possession and risk of loss of Ticket stock shall shift to Principal upon the delivery thereof to Principal or Principal's authorized representative, agent or employee.

(b) Principal hereby grants to Agent the right, in Agent's discretion but subject to Principal's right of prior approval, to advertise Attractions and the availability of Tickets at the Facility Box Office, by Telephone Sales and at all Outlets and, in connection therewith, to use the name of Principal, the Attraction and the Facility, as well as all other information respecting the Attraction. Agent, in its sole discretion, may promote and advertise on it own behalf or on behalf of Principal or others on the back side of all Tickets sold through the TM System at all Outlets and by Telephone Sales; provided, however, that the Principal shall have exclusive rights with regard to the sale of advertising on the back side of all Tickets sold at the Facility Box Office and on Season Tickets. Principal may, during the term hereof, provide and place advertisements in any form of media which Principal shall desire to promote the availability of Tickets; provided, however, that in the event Principal shall place any such advertisements, it shall, to the extent reasonably appropriate under the circumstances, use its best efforts to cause the corporate name, logo and central telephone number of Agent to be displayed in the advertisement, as well as the address of the Facility and, if practicable and possible, the identification of the Outlets where Tickets may be purchased. Agent and Principal shall separately receive and retain income derived from advertising which each is entitled to sell hereunder.

18. Accounting Procedures.

(a) Agent shall collect and deposit all revenues derived from Ticket sales through all Outlets and Telephone Sales in an account to be maintained by Agent at a major New Jersey or New York bank. Withdrawals of those portions of all Ticket sales revenues to which Principal is entitled shall, for all sales for Monday through Sunday of the prior week, be made from such account by Agent and delivered to Principal on Friday of each week. In the event that Principal cancels any Attraction, the amount of funds held by Agent in said account (but specifically excluding therefrom only the amount of Ticket sales revenues to which Agent is entitled hereunder on account of Customer Service Charges) shall be available for distribution by Agent to customers for refunds. In the event that the amount of funds held in said account is insufficient to make all refunds, Principal shall deliver the amount of such deficiency to Agent no later than 48 hours after notice by Agent to Principal of the amount of such deficiency.

(b) In the event that any Attraction is cancelled, Agent shall have the right to refund the Ticket price at each Outlet with respect to Tickets sold at such Outlet. In the alternative, the purchaser of a Ticket to such Attraction shall have the right to exchange such Ticket and receive a comparable Ticket with respect to a future Attraction. With respect to cancelled Attractions, Principal and Agent agree that Agent shall be entitled to retain the Customer Service Charges assessable with respect to the initial sale thereof, although no additional compensation shall be payable or fee assessed by Agent with respect to the exchange of any Tickets initially purchased at any Outlet or by Telephone Sales

19. Agent's Representations and Warranties; Default.

(a) Agent represents and warrants to Principal, in addition to the representations and warranties provided elsewhere herein, that:

(1) Agent owns and has title to the Hardware and license rights in and to the Software.

(2) This Agreement has been duly authorized, executed and delivered on behalf of Agent by its chief executive officer and constitutes the valid, legal and binding agreement of Agent, enforceable in accordance with its terms.

(3) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Agent, or result in any breach of, constitute a default under, or result in the creation of, any lien, charge, security interest or other encumbrance upon any assets of Agent or upon the Hardware or Software pursuant to any instrument to which Agent is a party or by which it or its assets may be bound.

(4) The Hardware and Software will perform, and operation of the TM System (including all repair and service responsibilities) will be undertaken, in a manner reasonably adequate for the performance of Agent's obligations under this Agreement; provided, however, that such warranties do not extend to or become applicable with respect to any delays, stoppages or malfunctions which are caused by the acts of any third parties which are not under, or are caused by events or causes beyond, the control of Agent.

(b) The occurrence of any of the following events shall, at Principal's option, constitute an Event of Default hereunder and operate to terminate this Agreement and Agent's right to effect sales of Tickets through the TM System in accordance with subsection (c) below:

(1) Agent defaults in the making of any payment required to be made by Agent to Principal under this Agreement on the date when such payment is due and payable and any such default continues for a period of 10 days after service of a notice of such default.

(2) Agent defaults in observing or performing any material covenant, condition or agreement in this Agreement on the part of Agent to be observed or performed, other than as referred to in subsection (b)(1) of this Section 19, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, given to Agent by Principal, unless Principal shall agree in writing to an extension of such time prior to its expiration.

(3) There shall occur the dissolution or liquidation of Agent or the filing by Agent of a voluntary petition in bankruptcy, or failure by Agent promptly to lift any execution, garnishment or attachment of such consequence as will impair the ability of Agent to carry out its obligations under this Agreement, or the commission by Agent of any act of bankruptcy, or adjudication of Agent as a bankrupt, or assignment by Agent for the benefit of its creditors, or the entry by Agent into an agreement of composition with its creditors, or the judgment by a court of competent jurisdiction approving any plan for

Agent's reorganization under the provisions of the general bankruptcy act, as amended, or under any similar act in any domestic or foreign jurisdiction which may now be in effect or hereafter enacted. The term "dissolution or liquidation of Agent," as used in this subsection, shall not be construed to include the cessation of the corporate existence of Agent resulting either from a merger or consolidation of Agent into or with another corporation or a dissolution or liquidation of Agent following a transfer of all or substantially all of its assets, provided that the resulting or surviving corporation or the transferee shall assume all the obligations of Agent hereunder.

(4) The exposure of the Hardware or any material portion thereof to any levy, seizure, assignment or sale for or by a creditor or governmental agency.

(c) Upon the occurrence of any Event of Default, Principal shall have the right to give Agent at least five (5) days notice of intention to terminate this Agreement and all rights of Agent hereunder on the date therein specified, and upon the effective date of such termination specified in such notice, the term of this Agreement shall end as fully and completely as if that were the date herein fixed for the expiration of the term of this Agreement, and any obligations of Principal and Agent to perform any covenant, condition, obligations or provision of this Agreement shall end except for the obligations of Principal and Agent with respect to any payment to the other accrued or payable at such date of termination, and Agent shall, at Principal's request, remove all Hardware from the Facility, but shall be liable as hereinafter in this Section provided.

(d) If the notice provided for in subsection (c) has been served and the term of this Agreement has ended as aforesaid, then (i) Agent shall, without demand, forthwith pay to Principal all amounts due and owing pursuant hereto, and (ii) Principal may, without further notice, reenter and repossess any portion of the Facility previously used by Agent with or without legal process and remove all persons therefrom, and Agent hereby waives any notice provided by law or otherwise to be given in connection therewith. Any and all property belonging to Agent or to anyone claiming by, through or under Agent which has not been removed by Agent within 24 hours after the notice provided for in subsection (c) has been served upon Agent and which may be found by Principal upon such reentry may be handled, removed or stored by Principal at the risk and expense of Agent, and Principal shall not be responsible for the preservation or the safekeeping thereof. Agent shall pay to Principal, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in Principal's possession or under Principal's control.

(e) In the event of a breach or a threatened breach by Agent of any of the material terms, covenants, conditions or provisions hereof, Principal shall have the right of injunction to restrain the same and the right to invoke any remedy allowed by law or in equity, including without limitation the right to money damages, as if specific remedies, indemnity or reimbursement were not herein provided for.

(f) The rights and remedies given to Principal in this Agreement are distinct, separate and cumulative remedies, and no one of them, whether or nor exercised by Principal, shall be deemed to be in exclusion of any of the others herein or by law or equity provided.

(g) The provisions of this Section shall service the termination of this Agreement.

20. Principal's Representations and Warranties; Default.

(a) Principal represents and warrants to Agent and, if requested by Agent, will provide an opinion of counsel and other supporting documents to the effect that:

(1) Principal is a body corporate and politic duly organized and in good standing under the laws of the State of New Jersey and has adequate power to enter into and perform this Agreement.

(2) This Agreement has been duly authorized, executed and delivered on behalf of Principal by its chief executive officer and constitutes the valid, legal and binding agreement of Principal, enforceable in accordance with its terms.

(3) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Principal or any provision of Principal's enabling legislation, or result in any breach of, constitute a default under, or result in the creation of, any lien, charge, security interest or other encumbrance upon any assets of Principal or upon the Hardware or Software, pursuant to any instrument to which Principal is a party or by which it or its assets may be bound.

(b) The occurrence of any of the following events shall, at Agent's option, constitute an Event of Default hereunder and operate to terminate this Agreement and Principal's right to the use of the TM System and possession of the Hardware and Software in accordance with subsection (c) below:

(1) Principal defaults in the making of any payment required to be made by Principal to Agent under this Agreement on the date when such payment is due and payable and any such default continues for a period of 10 days after service of a notice of such default.

(2) Principal defaults in observing or performing any material covenant, condition or agreement in this Agreement on the part of Principal to be observed or performed, other than as referred to in subsection (b)(1) of this Section 20, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, given to Principal by Agent, unless Agent shall agree in writing to an extension of such time prior to its expiration.

(3) Any affirmative act of insolvency by Principal, whether voluntary or involuntary, or the filing by Principal or any third person of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law or any other law or laws for the relief of, or relating to, debtors; provided, however, that no such act shall constitute an Event of Default unless and until Principal shall be unable to meet its obligations to Agent under the terms of this Agreement.

(4) The exposure of a substantial part of Principal's property to any levy, seizure, assignment or sale for or by a creditor or governmental agency.

(c) Upon the occurrence of any Event of Default, Agent shall have the right to give Principal at least five (5) days notice of intention to terminate this Agreement and all rights of Principal hereunder on the date therein specified, and upon the effective date of such termination specified in such notice, the term of this

Agreement shall end as fully and completely as if that were the date herein fixed for the expiration of the terms of this Agreement, and any obligations of Principal and Agent to perform any covenant, condition, obligation or provision of this Agreement shall end, except for the obligations of Principal and Agent with respect to any payment to the other accrued or payable at such date of termination, and Principal shall be liable as hereinafter in this Section provided.

(d) If the notice provided for in subsection (c) has been served and the term of this Agreement has ended as aforesaid, then, (i) Principal shall, without demand, forthwith pay to Agent all amounts due and owing pursuant hereto, and (ii) Agent may, without notice to or demand upon Principal, (1) disconnect all Hardware and terminate access to the Software and related services from the central computer facility to the Facility and/or all Outlets, (2) take immediate possession of the Hardware wherever same may be located without demand, notice or court order, (3) sue for and recover any and all damages and losses resulting from Principal's failure to perform the requirements of this Agreement, and (4) obtain injunctive relief for any breach of Principal's covenants contained in Section 31 hereof.

(e) In the event of a breach or a threatened breach by Principal of any of the terms, covenants, conditions or provisions hereof, Agent shall have the right of injunction to restrain the same and the right to invoke any remedy allowed by law or in equity, including without limitation the right to money damages, as if specific remedies, indemnity or reimbursement were not herein provided for.

(f) The rights and remedies given Agent in this Agreement are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by Agent, shall be deemed to be an exclusion of any of the others or of any other rights or remedies not herein set forth that Agent may have in law or equity.

(g) The provisions of this Section shall survive the termination of this Agreement.

21. Loss and Damage.

(a) In connection with the Hardware installed by Agent at the Facility, Principal hereby assumes and shall (once the Hardware is installed) bear (whether or not insured against) the entire risk of loss and damage (unless occasioned by the negligence of Agent) to the Hardware, ordinary wear and tear excepted, from any and every cause whatsoever from the date of installation at the Facility until removal thereof following termination of this Agreement. No such loss or damage to Hardware installed by Agent at the Facility shall impair any obligation of Principal under this Agreement. In the event of loss or damage of any kind to any Hardware installed by Agent at the Facility, Principal at its sole option, shall:

(1) Place the same in good repair, condition and working order to the satisfaction of Agent within 30 days of such loss or damage;

(2) Replace the same with similar property in good repair, condition and working order to the satisfaction of Agent within 30 days of the date of such loss or damage; or

(3) Pay Agent therefor in cash the full replacement cost of the same and Agent shall immediately install new hardware to replace the lost or damaged Hardware.

(b) In connection with the hardware utilized by Agent in connection with the central computer facility established and maintained by Agent in accordance with Section 8(a) of this Agreement (the "Section 8(a) hardware"), Agent hereby assumes and shall bear (whether or not insured against) the entire risk of loss and damage (unless occasioned by the negligence of Principal) to the Section 8(a) hardware, from any and every cause whatsoever. No such loss or damage to the Section 8(a) hardware shall impair any obligation of Agent under this Agreement. In the event of loss or damage of any kind to any of the Section 8(a) hardware, Agent shall replace or substitute the same with similar property in good repair, condition and working order to the satisfaction of Principal within 5 days of the date of such loss or damage.

22. Insurance.

(a) With respect to the Hardware installed by Agent at the Facility, Principal shall, at its own expense, provide and maintain at all times during the term hereof insurance to protect the Hardware against loss caused by fire, vandalism, malicious mischief and theft, in an amount equal to the full replacement value of the Hardware. Should Principal become unable to provide or maintain such insurance coverage, Principal shall promptly notify Agent in writing prior to the expiration of any such coverage and, thereafter, Agent shall have the right, but shall not be obligated, to provide insurance coverage for the occurrences specified above and charge Principal the cost of such insurance coverage.

(b) With respect to the Hardware installed by Agent at the Facility, Principal shall provide, at its sole expense, public liability and property damage insurance, required for its protection and the protection of Agent. Principal shall indemnify and hold Agent harmless from any and all risks, claims or causes of action arising from Principal's use, possession or operation of the Hardware, except to the extent of damages caused by the negligence of Agent in the repair or maintenance of such Hardware.

(c) With respect to the Section 8(a) hardware, Agent shall, at its own expense, provide and maintain at all times during the term hereof insurance to protect the Section 8(a) hardware against loss caused by fire, vandalism, malicious mischief and theft, in an amount equal to the full replacement value of such hardware. Should Agent become unable to provide or maintain such insurance coverage, Agent shall promptly notify Principal in writing prior to the expiration of any such coverage and, thereafter, Principal shall have the right, but shall not be obligated, to provide insurance coverage for the occurrences specified above and charge Agent the costs of such insurance coverage.

(d) With respect to the Section 8(a) hardware, Agent shall provide, at its sold expense, public liability and property damage insurance, required for its protection and the protection of Principal. Agent shall indemnify and hold Principal harmless from any and all risks, claims or causes of action arising from Agent's use, possession or operation of such hardware.

(e) All insurance provided and maintained by Principal or Agent shall be in such amounts, under such forms of policies, upon such terms, for such periods and written by such companies as Principal and Agent shall agree upon and shall provide for the waiver of the insurer's right of subrogation against Principal and Agent. All policies of insurance shall provide for at least 10 days prior written notice of cancellation to either Principal or Agent. Each party shall furnish the other with certificates of

such insurance or other evidence satisfactory to the other as to its compliance with the provisions of this Section.

23. Taxes.

(a) Principal shall keep all of the Hardware and Software free and clear of all levies, liens and encumbrances and shall reimburse Agent for all license fees, registration fees, assessments, charges and taxes, whether municipal, state or Federal, with respect to the Hardware and Software, including, but not limited to, use, excise and property taxes, and penalties and interest with respect thereto, except and excluding, however, any taxes based on or measured solely by Agent's net income.

(b) Agent shall keep all of the Hardware and Software, as well as the Section 8(a) hardware, free and clear of all levies and shall reimburse Principal for all license fees, registration fees, assessments, charges and taxes, whether municipal, state or Federal, with respect to the Hardware and Software, as well as the Section 8(a) hardware, including, but not limited to, use, excise and property taxes, any taxes based on or measured solely by Agent's net income, and penalties and interest with respect thereto.

24. Hardware and Software are Personal Property. Principal covenants and agrees that the Hardware and Software and the Section 8(a) hardware, and shall at all times be and remain, personal property which shall, at all times, remain the sole and exclusive property of Agent (subject to any security interest or licensor's rights therein). Principal will not move the Hardware and Software nor permit the same to be moved from the Facility without Agent's consent, which consent shall not be unreasonably withheld. Principal shall give Agent prompt written notice of any attachment or other judicial process affecting any item of Hardware or Software or any item of the Section 8(a) hardware. Agent shall give Principal prompt written notice of any attachment or other judicial process affecting any item of Hardware or Software or any item of the Section 8(a) hardware.

25. Designation of Ownership. If, at any time during the term hereof, Agent supplies Principal with labels, plates or other markings stating that the Hardware is owned by Agent, Principal shall affix and keep the same in a prominent place on the Hardware in recognition of Agent's ownership of the same.

26. Use. Principal shall use the Hardware and Software in a careful and proper manner and shall comply with and conform to all Federal, state, municipal and other laws, ordinances and regulations in any way relating to the possession, use or maintenance of the Hardware and Software. Neither the Principal, nor its employees, agents, servants or representatives, shall alter, modify, copy or add to the Hardware or Software without the prior written consent of Agent.

27. Surrender of Equipment. Upon the expiration and termination of this Agreement, Principal shall return to Agent the Hardware and Software installed by Agent at the Facility in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted.

28. Assignment and Sublease. Without the prior written consent of Agent, which may not be unreasonably withheld, Principal shall not (a) assign, transfer, pledge or hypothecate its rights in this Agreement or any interest therein, or (b) permit the Hardware or access to the Software or any part thereof to be

used by anyone other than Principal or Principal's authorized employees. Any such assignment shall not relieve Principal of any of its obligations hereunder. Principal, without Agent's consent but otherwise subject to the forgoing conditions, may assign this Agreement to a legal entity which is either (i) the successor by merger or otherwise, to all or substantially all of Principal's assets and liabilities, or (ii) controls or is controlled by, or is under common control with, Principal. Without the prior written consent of Principal, which may not unreasonably be withheld, Agent shall not assign, transfer, pledge or hypothecate its rights in this Agreement or any interest therein. Any such assignment shall not relieve Agent of any of its obligations hereunder. Agent, without Principal's consent but otherwise subject to the foregoing conditions, may assign this Agreement to any subsidiary, or to a parent company, or to any corporation into which it is merged, or to any company which controls or is controlled by, or is under common control with, Agent. Any assignment, transfer, pledge or hypothecation for which consent is required hereby and which is made without such consent shall be void.

29. Indemnity. (a) Principal shall indemnify Agent against, and hold Agent harmless from, any and all claims, actions, damages, obligations, liabilities and liens imposed or incurred by or asserted against Agent or its successors or assigns, arising out of Principal's alleged negligent use of the TM System at the Facility, except to the extent that any such claim shall relate to Agent's negligence or willful misconduct.

(b) Agent shall indemnify Principal against and hold Principal harmless from, any and all claims, actions, damages, obligations, liabilities and lien imposed upon or incurred by or asserted against Principal, or its successors or assigns, arising out of any patent, trademark or copyright infringement alleged in connection with Principal's or Agent's use of the TM System, or arising out of Agent's alleged negligent use of the TM System, or arising out of Agent's operation of its Outlets, except to the extent that any such claims shall relate to Principal's negligence or willful misconduct.

30. Independent Contractor. The relationship of Agent and Principal hereunder shall in no way be construed to create a joint venture or partnership, to constitute Agent as an employee of Principal for any purpose whatsoever, or, except under and pursuant to and consistent with the provisions of this Agreement, to render the parties hereto liable for any duties, obligations or liabilities of the other party, Agent being an independent contractor engaged on its own in an entirely separate business.

31. Restrictive Covenant. Principal recognizes and acknowledges that the TM System as it now exits, including the Hardware and Software associated with the TM System and all improvements in the state of the art relative thereto, represents a valuable, special and unique asset of Agent. Principal consents and agrees that it will not, during or after the term of this Agreement, disclose any information, design specifications, programs, listings, documentation or other supporting or related materials or information of any nature or description whatsoever relating to the TM System, Hardware or Software, or applications, adaptations and modifications thereof, whether now existing or developed in the future, to any person, firm, corporation, association or entity for any reason or purpose whatsoever; provided, however, that this covenant shall not apply with respect to any information which becomes a matter of general knowledge within the public domain or if Principal is obligated to disclose same by reason of any court order, rule or regulation applicable to the conduct of its business. Principal does further agree and

acknowledge that any remedy at law for any breach or threatened breach of the provisions of this Section and the covenants set forth herein will be inadequate and, accordingly, Principal grants to Agent the right and entitlement to seek injunctive relief for any such breach or threatened breach of the provisions and covenants herein, this in addition to, and not in limitation of, any and all other remedies at law or in equity otherwise available to Agent. Termination of this Agreement by either party shall not terminate the continuing confidentiality obligations imposed on Principal by the terms of this Agreement.

32. Principal's Agreements. No agreement between Principal and any third party shall contain any provision inconsistent with any provision of this Agreement. Principal agrees to indemnify Agent against any loss arising out of any breach by Principal of the covenant contained in this Section 32.

33. Miscellaneous.

(a) Notices. Any notice required or permitted to be given by the provisions hereof shall be conclusively deemed to have been received by a party hereto on the day it is delivered to such party at the address indicated below (or at such other address as such party shall specify to the other party in writing), or, if sent by registered or certified mail, on the third business day after the day on which mailed, addressed to such party at such address:

(i) If to Ticketmaster, at

Ticketmaster - New York
555 West 57th St, 14th Floor
New York, New York 10019
ATTN: John Buschhorn and
Gene Cobuzzi

with copies to:

Ticketmaster Corporation
3701 Wilshire Blvd.
Sixth Floor
Los Angeles, California 90010
ATTN: Fredric D. Rosen
or Ned S. Goldstein

(ii) If to Principal, at

New Jersey Sports and
Exposition Authority
East Rutherford, NJ 07073
ATTN: Michael Rowe

(b) Effect of Waiver. No delay or omission to exercise any right or remedy in favor of Agent or Principal upon any breach or default hereunder shall impair any such right or remedy or be construed to be a waiver of any such breach or default; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent, or approval on the part of Agent or Principal of any breach or default under this Agreement, or of any provision or condition hereof, must be made in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to Agent or Principal, shall be cumulative and not alternative.

(c) Attorney's Fees. In the event of any action at law or suit in equity in relation to this Agreement, the prevailing party shall be entitled to a reasonable sum for its attorney's fees.

(d) Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey.

(e) Additional Documents. Each of the parties hereto agrees to execute and deliver such additional and further documents and instruments as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

(f) Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(g) Binding Effect. The terms, conditions, provisions and undertakings of this Agreement shall be binding upon and inure to the benefit of each of the parties and their respective successors and assigns.

(h) Amendments. This Agreement shall not be changed, modified, altered or amended in any respect without the mutual consent of the parties hereto, which consent shall be evidenced by a written amendment to this Agreement executed by the parties hereto.

IN WITNESS WHEREOF, Agent and Principal have caused this Agency Agreement to be duly executed as of the date first above written.

TICKETMASTER-NEW YORK, INC.,
A Delaware Corporation

Date signed:
8/25/90

By: Fredric D Rosen
Title: Chairman of Board

NEW JERSEY SPORTS &
EXPOSITION AUTHORITY

Date signed:
8/24/90

By: Robert E. Mulholland
Title: Pres & CEO

Mr. DINGELL. I assume that you are telling me then that the licensees do not have to provide disclosure of service and handling charges.

Mr. GOLDSTEIN. Pursuant to their contract with us they do not. We have found that it's beneficial to do so. We are a consumer oriented company. Each of the licensees, I presume, is consumer oriented. We think it makes good business sense, and therefore I believe that's why they all do it.

Mr. DINGELL. Does Ticketmaster compete with other ticket sellers, new technologies, and so forth?

Mr. GOLDSTEIN. Yes, very much so. I think there is a common misconception with respect to the ticketing industry. Basically, the way Ticketmaster competes is it competes to provide the computerized inventory control and ticketing systems to principally venues. Venues, a lot of whom are public facilities, put out requests for proposals soliciting bids. Ticketmaster bids on these various facilities to provide the services. It's very much like other concessionaires where food and beverage is solicited, and I believe parking and other things.

The competitors range from every software company there is. Home Shopping Network was involved in it. IBM, I am told, just got a major contract that Ticketmaster just lost. There is a company called Softix. There is a company called Telecharge in New York owned by the Schubert organization, which has Ticketron software. There are companies throughout the world that compete in ticketing.

In terms of the number of tickets that are sold, which is the other side of the coin and which is not, in my opinion, the "market," as I stated, there are approximately 1.5 billion tickets sold in the United States, at least in 1993, in the live entertainment field, and we sold approximately 50 million tickets that we received service charges on.

Mr. DINGELL. Does Ticketmaster have anything to do with setting the face amount of entertainment ticket prices?

Mr. GOLDSTEIN. No, we do not. To the extent that somebody could say that there are *de minimis* charges and to the extent that somebody can say that those are someone factored into the ticket price, then somebody might be able to make that argument, although I don't think that's a valid argument.

Also, occasionally and very, very rarely there are ticket prices that are known as "all-in" ticket prices where there is no service charge and it's the same price whether you buy the ticket at a box office or through Ticketmaster. In that case Ticketmaster's fee, which is negotiated, is inside the ticket price. I don't know the extent to which that affects the ticket price, but obviously it has to have some effect if it's paid out of that price.

Mr. DINGELL. Does Ticketmaster have anything to do with the number of tickets sold at any given event?

Mr. GOLDSTEIN. We like to think that we increase sales.

Mr. DINGELL. But do you actually have anything to do with the number of tickets that are sold? In other words, do you in any way dictate the number of ticket sales at a particular event?

Mr. GOLDSTEIN. No, we do not dictate them.

Mr. DINGELL. Mr. Chairman, I note my time has expired. I have other questions but I want to honor the 5 minute rule.

Mr. MANTON. We will yield you as much time as you desire, Mr. Chairman.

Mr. DINGELL. Thank you, Mr. Chairman.

Can you give us an idea of the percentage of total tickets that Ticketmaster sells at the events in which it is involved?

Mr. GOLDSTEIN. We have never done a detailed study. What we have done is looked generally, and generally I would say it averages somewhere in the neighborhood of 20 percent.

Mr. DINGELL. Who sells the balance of the tickets?

Mr. GOLDSTEIN. The venue itself.

Mr. DINGELL. And the promoters and the artists?

Mr. GOLDSTEIN. Yes, but the principal seller would be the venue itself.

Mr. DINGELL. What types of fees or charges does Ticketmaster impose on ticket sales?

Mr. GOLDSTEIN. Each of our contracts are individually negotiated. I think when we did the math last year the average came out to $3.15 as the average charge. There are different charges. They are negotiated; they are set forth in the contracts.

Mr. DINGELL. You negotiate service charges on almost all sales plus handling charges for phone sales; is that right?

Mr. GOLDSTEIN. The handling charge is a per-order charge and it's analogous to a shipping and handling or mailing charge. So it is telephone sales that are done over the phone and through credit cards when we mail the ticket out, yes.

Mr. DINGELL. Does Ticketmaster always call handling charges those charges which are connected with telephone sales, or do they have different titles? Are service charges and convenience charges or fees always the same thing?

Mr. GOLDSTEIN. Generally we refer to our charges as customer convenience charges. I know that occasionally we do refer to them as service charges. Most people refer to them in speaking as service charges, including probably most of our employees occasionally say that. We always try to make a separate distinction from a service charge or a convenience charge, and a handling charge is generally the per-order charge associated with a telephone order and a service charge or a convenience charge is a per-ticket charge.

Mr. DINGELL. How are they listed on the ticket face or the receipt for the ticket sale? Always by what they are, or are they listed under some other form of comment?

Mr. GOLDSTEIN. The convenience charges are listed on the ticket. There is not uniformity in terms of how it is done across the country. We are in the process of trying to make that more uniform. Generally it will say customer convenience charge. Occasionally it says service fee or charge. Sometimes it just says cc or ccc and sometimes I've seen them where it doesn't specify exactly what the charge is. In all cases the charge is disclosed prior to the time the person receives the ticket that that is the charge.

Mr. DINGELL. Why the difference in the way you denominate these charges?

Mr. GOLDSTEIN. I think it's just based on the fact that our company has grown over the last several years and different manage-

ment styles and even different ticket stock companies that were used. Again, we are trying to make that uniform. Our goal is complete disclosure.

Mr. DINGELL. Do box offices charge service or convenience fees?

Mr. GOLDSTEIN. My understanding is that most of them don't but some of them definitely do.

Mr. DINGELL. Why do some not and some do?

Mr. GOLDSTEIN. It is totally their own economic decision. I would imagine that most of them that do do so because they are in a financial squeeze; they do not have the great negotiating strength when dealing with acts and promoters and agents, but principally with acts; and it's a revenue source for them.

Mr. DINGELL. Does Ticketmaster have anything to do with running the client's box office?

Mr. GOLDSTEIN. With running it?

Mr. DINGELL. Yes.

Mr. GOLDSTEIN. The answer is generally no. In some cases the client does not have the facilities or employees to do so and they may ask us to do that.

Mr. DINGELL. In some instances does Ticketmaster roll the service or handling charges into the price of the ticket?

Mr. GOLDSTEIN. To answer your question, occasionally and very infrequently there is what is known as an all-in price in which Ticketmaster is paid directly by the venue and not by the consumer. To the extent that you characterize that as rolling it in, I think that is what you are talking about. In those cases there generally would not be a service charge or a convenience charge but there is one charge that applies both at the box office, at an outlet and by telephone.

Mr. DINGELL. Do venue owners and operators add charges and fees to the ticket price? These are called, for example, parking fees or facility fees.

Mr. GOLDSTEIN. They definitely do. Not all of them do that and I couldn't state how often that is done.

Mr. DINGELL. This is a practice which began in about the last 10 years; is that right?

Mr. GOLDSTEIN. That's what I have been told. I do not have a direct understanding, but the way the business is, acts are a unique quality, and when an act is negotiating or goes through a promotor who negotiates with the building, they have tremendous leverage in the negotiating process if the building wants them, and oftentimes their contracts demand 90 percent or more of the gross revenues. I think the buildings have very little revenue stream available to them. What they do have is the ability to sell rights at the venues, the right to do the ticketing, the right to do the food and beverage, the right to do the parking. In order to compensate the venues, the venues sometimes need extra money. A lot of these are municipal venues and they impose their own charges.

Mr. DINGELL. Ticketmaster usually does not advertise the events for which it sells tickets, does it?

Mr. GOLDSTEIN. No, it does not. There are two promotional vehicles that we have. One is what we refer to as a calendar of events. It's a poster that is in the outlets. It lists the upcoming events. It's a monthly poster. It doesn't include prices although it does say that

there are convenience charges on purchases. Another promotional vehicle we have is an event guide which is a little bit more detailed and lists the events. It doesn't list the prices. It does list that there are convenience charges associated with purchasing through Ticketmaster.

Mr. DINGELL. Not infrequently Ticketmaster's name and logo appear on ticket ads; is that right?

Mr. GOLDSTEIN. That's correct.

Mr. DINGELL. There is an ad in today's New York Times. It says ticket prices range for a particular event from $19 to $44, but this includes no reference to any sort of service fee, convenience fee or handling charge for telephone sales. Can you give us an idea what the fees for that event would be?

Mr. GOLDSTEIN. I honestly have no idea.

Mr. DINGELL. It's for "A Christmas Carol." Can you tell us what the fees would be for this event?

Mr. GOLDSTEIN. No, I cannot, but I would be happy to get that information for you. I'm not familiar enough with the particular fees on a particular event.

Mr. MANTON. The Chair inquires of Mr. Dingell if he would move that that New York Times article be placed in the record.

Mr. DINGELL. I would ask that, Mr. Chairman.

Mr. MANTON. Without objection, so ordered.

Mr. DINGELL. Let's try and recap this.

Ticketmaster imposes additional fees on ticket sales in most cases. In some limited cases such as a charity event Ticketmaster does not charge a fee. In other limited cases like premiere high demand concerts Ticketmaster's fees are rolled into the price of the ticket and are not at all disclosed.

In most cases involving box office sales no service fee is charged by the owner of the venue, but in some cases the venue will charge a service fee at the box office. Usually Ticketmaster does not run the box office but in a few cases it does.

Normally at Ticketmaster outlets customers pay cash for tickets. An additional charge, sometimes called the service fee, sometimes called a convenience fee, is added to the price of the ticket. For telephone sales by Ticketmaster customers always will be charged a service or convenience fee plus a so-called handling charge.

In addition, owners and operators of facilities have begun adding charges, usually called parking fees or facility charges, to the price of the ticket.

Ticketmaster usually does not advertise specific events but it does allow its name to be used in such advertisement. These ads almost never indicate the service, convenience or handling charges which will be imposed in addition to the price of the ticket, much less, by the way, parking or facilities fees, or that different charges may apply, depending on whether the consumer goes to the box office, Ticketmaster outlet, or uses a telephone.

Is this a fair statement?

Mr. GOLDSTEIN. I would say most of it is a fair statement. I think it's indicative that there are a lot of complicated issues involved in this, that there are a lot of players in this, that Ticketmaster is one of the players but probably one of the smallest players involved in the entire aspect of putting on an event and who advertises the

event and who gets the income from the event. Very little of the money comes to Ticketmaster. In cases of disclosure, as I said, disclosure is not something that is very much offered in entertainment events. I don't think it's offered in a lot of other events. For instance, in the airline industry travel agents, their fee is built——

Mr. DINGELL. Sir, my time is limited. I would rather stay out of those questions at this time.

Let me just try to further conclude. You tell me whether you agree or disagree.

Mr. GOLDSTEIN. OK.

Mr. DINGELL. Ticketmaster provides a service that many consumers find valuable. I think you agree with that.

Mr. GOLDSTEIN. Yes.

Mr. DINGELL. Ticketmaster and others disclose some fees but do not disclose others. Sometimes the disclosure is under one name and sometimes it's under another name or definition; is that right?

Mr. GOLDSTEIN. Generally Ticketmaster always discloses its fees.

Mr. DINGELL. Generally.

Mr. GOLDSTEIN. Generally. If it doesn't disclose its fees it's because there isn't a separate fee paid by the consumer. Whenever there is a separate fee paid for the service it is disclosed by Ticketmaster. Other people, I do not know their practices and I would presume that they do not have the disclosure policies that we have.

Mr. DINGELL. I assume you are telling me that Ticketmaster deems it to be appropriate to disclose the fees and the charges for the ticket sales; is that right?

Mr. GOLDSTEIN. That's right. We think that is a good business practice and that's why we support the bill.

Mr. DINGELL. Thank you very much.

Mr. GOLDSTEIN. Thank you.

Mr. DINGELL. Mr. Chairman, I would ask unanimous consent that my opening statement be included at the appropriate point in the record and also that my letter to Mr. Fred Rosen, who is the CEO of Ticketmaster, dated September 16, 1994, and his reply to me be admitted into the record at the appropriate point.

Mr. MANTON. Without objection, it is so ordered.

Mr. DINGELL. Thank you, Mr. Chairman. Thank you, sir.

Mr. MANTON. The Chair recognizes Mr. Klug.

Mr. KLUG. Mr. Goldstein, it's nice to see you again. We had an opportunity to talk in my office earlier in the week.

Would you give me some sense of your perception of what happened and has happened in the past with sporting events and your sense on what may be the best way for the Federal Government to get a handle on the kind of problems we saw at the Rose Bowl last year?

Mr. GOLDSTEIN. It's a pleasure to see you again and I'm honored that you asked me for my opinion.

I think what happens is that entities that do not have the contractual rights to tickets to, for example, the Rose Bowl or the Super Bowl or various sporting events advertise that they do have these tickets available prior to the time that they may or may not obtain possession of the tickets. I think the Rose Bowl was one of the primary examples of this. I think it was outrageous what hap-

pened with respect to the supporters of the Badgers and I think it's a real issue.

Throughout the United States there are probably 17 States that have "anti-scalping laws." California has a very, very limited anti-scalping law which basically says you are not allowed to resell within a certain area on the grounds of an event. You talked about DOT involvement. In Florida the anti-scalping law has special provisions with respect to travel agents and I believe packages.

Mr. KLUG. It exempts travel agents; is that correct?

Mr. GOLDSTEIN. I don't want to testify to that because I have not looked at it for a while, but I know there is a special provision with respect to them, and I believe that is what it does. It exempts them so that they can put together packages. I think one of the biggest problems is the advertisers of these tickets.

For instance, you will notice that newspapers will advertise ticket availability and the tickets to Rose Bowl and tickets to the Super Bowl and to various events irrespective of whether or not somebody has those tickets or the ability to sell those tickets. The newspapers in the editorial section will say it's terrible that people got stranded and got ripped off and what have you, but then they will take the income from taking these advertisements, and the advertisements are the principal ways that the people learn of the presumed availability of the tickets.

Mr. KLUG. It's easy to find Ticketmaster. There is no problem to figure out where your corporate office is and track you down and ask you a question.

Mr. GOLDSTEIN. Many people have.

Mr. KLUG. And Mr. Dingell in particular.

In the case of what happened last year in sporting events, would it be fair to characterize some of the competitive operations you are looking at as less corporations and more as really boiler rooms that churn tickets out?

Mr. GOLDSTEIN. I am not familiar enough to make that characterization. However, I would say that anybody that offers tickets, has somebody fly out from Wisconsin for an event that is a very special event, and doesn't provide them with the tickets, I would have a characterization of them that I would not feel comfortable stating publicly right now.

Mr. KLUG. I know States have anti-scalping laws on the books. I'm a sports fan. We've all sold tickets, bought two tickets. That's really not my concern. I guess my worry is, how do we get to the people who tend to indicate to the public they have got blocks of 200 or 300 or 400 tickets, not somebody making 50 bucks outside an LA Raiders football game or a Marquette basketball game? How do we get at those people? What is your suggestion on the best way to pursue it? Is it State regulation and lawsuits? Is it something we should be doing at the Federal level?

Mr. GOLDSTEIN. First of all, I think you are right in terms of there are people that are in the business of selling those blocks. I think some of them were outraged as well at what happened with the Rose Bowl. Those people are easily findable and have been in business, especially in Los Angeles, for a long period of time. It's a very difficult question. It's a question that I have analyzed a lot.

I was in London last year because we have an operation there when they were talking about putting restrictions in terms of selling tickets. They have a real problem because of all the foreign speaking people that come in for London theater. The universal problem is one of enforcement.

It's a very difficult issue. Nine out of ten times it's a victimless crime. The examples you are talking about are very much crimes with victims, and I think that there has to be some way of addressing that. I don't know the appropriate forum, but I would definitely like to further consider it and I would like to work with you on it, because I think it's a very important area and I think with the technology that is evolving and the expanse of the media it's something that needs to be addressed.

Mr. KLUG. I would be delighted to hear recommendations from you or your counsel on what the best way may be to address it on the Federal level. I just want to clarify one more time for the record. When Ticketmaster handles a rock concert anywhere, do you have anything at all to do with establishing the base price or the price for that venue? If the Rolling Stones make an agreement to come to Washington, do you have anything to do with the Rolling Stones' arrangement with the promoter for the price to be paid?

Mr. GOLDSTEIN. No, we do not.

Mr. KLUG. You essentially just handle and process the tickets for them?

Mr. GOLDSTEIN. We process the tickets generally for the venue or for the promoter, depending on the transaction, and the price is established by the act, the agent, the manager. We are not involved in the process of how the price is determined. There are two caveats to that. One is to the extent somebody could say we get fees, that may influence the price, and to the extent that in the rare example where there is only one price and no charges outside of the price, obviously we get paid from that price. Ninety-nine point 99 percent of the time absolutely nothing to do with that whatsoever, especially in the cases such as were brought up at the previous hearing.

Mr. KLUG. So you have absolutely nothing to do at all with setting prices nor are you large enough to really set prices for any act anywhere in the country?

Mr. GOLDSTEIN. We definitely are not large enough; we definitely don't have the power; and we definitely would not be in business very long if we suggested price.

Mr. KLUG. Thanks again. I would appreciate whatever insights you might have on how to solve the sporting problem.

Mr. GOLDSTEIN. Thank you very much.

Mr. MANTON. Mr. Goldstein, you have stated, I believe, that Ticketmaster sells only 20 percent of all entertainment and sporting event tickets sold. In your testimony you state that many of your clients will directly sell most of their own tickets but that these tickets are printed on Ticketmaster's master system and use your ticket blanks. Do you receive remuneration from your clients when they use your system and your materials?

Mr. GOLDSTEIN. Let me clarify one thing. I stated approximately 20 percent of the tickets to our own clients' events as opposed to

all events. The percentage drops to a very, very small number in terms of all events.

It depends on the financial arrangement. We may be paid a penny, a nickel, six cents for the ticket stock that we supply. A lot of times they supply their own ticket stock when they are doing season ticketing and they want to have glossy stock, and it's more expensive. If we supply the stock, sometimes we supply the stock without any charge and we are entitled to sell advertising on the back of the stock. So again, it's all individually negotiated. In any event, it is a very de minimis amount of the overall cost involved in selling tickets.

Mr. MANTON. What percentage of tickets sold are sold by your clients using your system and your materials?

Mr. GOLDSTEIN. I cannot answer that. I don't know if I could get you the answer to that. Basically, our clients control what tickets are available to us to sell, and we may not even know the full inventory of the tickets available. They control what is given to us and what is available for sale to the general public, which is what we sell. There may be holds because of seats that you cannot see a stage based on the placement of the stage. We don't know if that is a ticket that they are holding and they are selling or if that's a ticket that is not even being sold at all. It would be a very difficult task to answer that question.

Mr. MANTON. When Mr. Dingell was asking you some question you made a distinction between convenience fees and handling fees. Let me see if I understand it. Handling fees usually come about when tickets have to be mailed to the consumer. If I call up for a number of different events, let's say one sporting event and a cultural event and maybe a third is a concert or whatever, there is a convenience fee on each ticket; is that correct?

Mr. GOLDSTEIN. Correct.

Mr. MANTON. As far as handling, is that all considered one transaction and it's going into one envelope with one stamp on it?

Mr. GOLDSTEIN. I know for the same event with numerous tickets it is. I have never been asked nor have I ever considered what the answer is to your question with respect to different events in one order or if that is something that we do. I would be happy to find out for you.

Mr. MANTON. You are saying that if there were multiple tickets for the same event there would only be one handling charge.

Mr. GOLDSTEIN. Correct. It's a per-order charge.

Mr. MANTON. That doesn't go on the ticket, does it?

Mr. GOLDSTEIN. No, it does not.

Mr. MANTON. Does it go on a receipt?

Mr. GOLDSTEIN. Currently I do not believe it is on the ticket or a receipt. I have had conversations where we have decided that we will add some type of receipt to make sure that that is on somebody's receipt.

Mr. MANTON. This would all be part of the disclosure when one figured what was the price. Well, there is a ticket price and there is a convenience charge, and we called up and there was a handling charge.

Mr. GOLDSTEIN. All of that is in the script. All of that is disclosed to the people. The components of the price and the full price are

disclosed to everybody in a script that our operators use. It comes up on their PCs and I think everybody that ever buys a ticket from us is fully aware of the price, including any convenience charge and any handling charge. It behooves us to do that because we are a service business with respect to those people.

Mr. MANTON. As was pointed out earlier, in some contracts fees and surcharges are rolled into the face value of the ticket and the venue itself will pay Ticketmaster directly for services rendered. Wouldn't this system defeat a purpose of the legislation, which is full, complete and clear disclosure to inform customers what they are paying in the way of fees and surcharges to the actual cost of the ticket?

Mr. GOLDSTEIN. I think that currently the law does not require what disclosure that Ticketmaster currently does. Because of the consumer concerns that Ticketmaster has, Ticketmaster has practiced disclosure and would continue to practice disclosure. So I don't think it is a legal question as opposed to a market question. The other charges, what the act is getting, which is the principal amount in the ticket price, what other people are getting out of the ticket price, none of those other things are disclosed. If you are making an analogy, the bill is specifically looking only at one area of the entire process involved in the price of attending an event. I think Ticketmaster's charges are the only aspect that are consistently disclosed.

Mr. MANTON. Why would they have this rolled in, built in, one price arrangement as opposed to your normal way of doing business where they have the price and then you add your charges?

Mr. GOLDSTEIN. I've never been involved in the situation where they have, but I would imagine that it would probably wind up being more profitable for the acts to do it that way. Again, I do not have expertise to state that.

Mr. MANTON. You state that Ticketmaster negotiates separately with each venue as to prices, terms and conditions for ticket sales and these contracts generally average 3 to 5 years in duration. You mention in your testimony that a good many of your clients are public entities and the right to sell tickets is subject to a public bid process. Are these sealed bids, public negotiations? How do you go about negotiating or bidding for such a ticket contract?

Mr. GOLDSTEIN. An RFP, request for proposal, is usually issued by the building or the operator of the building. We answer the RFP with a response. My understanding is that they are sealed and that body that has a scoring system and looks at the various bids that come in score the bids—I couldn't tell you how subjective versus how objective it is because I'm not sure of all the criteria—and then makes the award. Depending on the specificity of the request for proposal, a contract is then negotiated.

Mr. MANTON. Finally, Mr. Rosen, the CEO of Ticketmaster, stated in testimony before the Government Operations subcommittee that its contract with the Meadowlands is a "public document." Subsequent press reports have noted that neither Meadowlands nor Ticketmaster will make such a document available. Was that a misstatement by Mr. Rosen?

Mr. GOLDSTEIN. No. It's a public document. The Meadowlands is operated, I believe, by a division of the State of New Jersey. I be-

lieve the State has what is commonly referred to as a sunshine law and that the availability of that contract is through the public disclosure act of New Jersey and anybody can send away and get that contract.

Mr. MANTON. In order to clear up any misunderstanding either as reported in the press or in the record, may I ask that you provide this committee with a copy of that agreement.

Mr. GOLDSTEIN. Yes, you can.

Mr. MANTON. That concludes my round of questioning. We thank the witness.

Mr. GOLDSTEIN. Thank you very much.

Mr. MANTON. Thank you, sir.

We will move on to our next panel, consisting of two people, Mr. Barry Lefkowitz, executive director, East Coast Ticket Brokers Association, and Mr. Bill Wood, consumer education director, U.S. PIRG.

STATEMENTS OF BARRY E. LEFKOWITZ, EXECUTIVE DIRECTOR, EAST COAST TICKET BROKERS ASSOCIATION; AND WILLIAM A. WOOD, CONSUMER EDUCATION DIRECTOR, U.S. PUBLIC INTEREST RESEARCH GROUP EDUCATION FUND

Mr. LEFKOWITZ. Good afternoon, Mr. Chairman, members of the committee. I am Barry Lefkowitz, executive director of the East Coast Ticket Brokers Association.

We commend you, Mr. Chairman, Chairman Dingell, Congressmen Swift and Condit for the introduction of H.R. 4995.

For the record, Mr. Chairman, my home State of New Jersey will never have an opportunity to be in the Rose Bowl nor probably any other bowl.

I appear today before you to speak in favor of H.R. 4995. As an industry, we are most desirous to become a contributing partner in the quest to provide consumer protection and disclosure.

The East Coast Ticket Brokers Association was established in May of this year. Our present membership consists of ticket brokers from Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia, and soon to add North Carolina. We expect that within the next 6 months, based on the present trade association model established by the East Coast Ticket Brokers Association, the industry will be national in scope. We are determined to develop self regulation, improve the efficiency of the industry and maintain ethical standards within the ticket broker business. In our efforts to provide the consumer with protection, as is the goal of H.R. 4995, we established both a consumer hotline and a mediation panel to address the concerns of consumer.

When Secretary Pena requested comments regarding the expansion of the Super Bowl Rule in response to the problem at the Rose Bowl, we responded immediately with a variety of recommendations that would protect consumers and provide for proper redress. In addition, we had a series of meetings with Congressman Klug and his staff, and also Senator Kohl.

Our clients are individuals and business people who are unable to stand in line, wait on hold on the telephone, or need last minute help. They consider the personalized service and quality of tickets

valuable service to them. Our members provide full disclosure to their clients so they know their seat locations and the return policies. For example, I received a postcard from one of our member's client's who said, I'm a paraplegic and unable to dial a phone or stand in line. Without ticket brokers I never would be able to enjoy going to a concert.

As you are aware, Mr. Chairman, our members have been contributing tickets to concerts, sporting events and special events to provide an opportunity for those who might otherwise not have a chance to see a show or sporting event. When 84 Irish citizens were stranded in Boston during the World Cup matches, my brokers provided them with complimentary tickets to the Ireland-Norway match at the Meadowlands in New Jersey. Our members also ensured that they had proper transportation from Boston to New Jersey.

H.R. 4995 forms the foundation for consumer protection and public disclosure. Ticket purchasers have a right to know what they are paying for.

Section 3 of H.R. 4995 provides the basis for proper public awareness.

However, I believe that section 3, part (1) needs to be amended as it relates to the question of any fee, charge or assessment to be imposed upon the face value of the ticket. Some venues have contractual arrangements that allow the service charge to be rolled into the face value that is printed on the ticket. Under H.R. 4995 the agent would not have to input any information on the ticket for public disclosure since their charges are not above the face value listed on the ticket. Some venues are capable of this kind of contractual agreement. Therefore, any venue in the country would be able to arrange similar contracts. Without language to correct this problem, the law would be easily skirted.

We are concerned that section 3, part (2) is also subject to misinterpretation. We are in favor of full disclosure. However, if a ticket broker were required to mark the broker's additional service charge on the ticket itself, important information which the venue needs to process the ticket could possibly be obscured. Also, we fear that venues may unfairly discriminate against patrons who bought tickets from brokers. Therefore, we suggest that section 3, part (2) be clarified to show that the fee may be on either the ticket or on the receipt.

We believe that referring to ticket brokers in H.R. 4995 is an important aspect for consumer protection. Our customers would be informed of the face value of the ticket—most of our brokers already do so—and the cost to them to purchase the ticket.

In our discussions with your staff, we recommended that it would also be important to define the term "ticket broker," which I think in part responds to Congressman Klug's concern about this particular issue with the Rose Bowl situation, as we do in legislation presently being considered by the New Jersey Legislature and in the near future by New York and Connecticut.

We think it is in the public's best interest to deal with legitimate small businesses. Our members are very serious about our role in protecting consumers and being legitimate brokers.

We are prepared to work with you, Mr. Chairman, the members of the committee and the staff to pass this pro-consumer legislation. We see this legislation as the foundation. We stand ready to recommend additional areas for future consideration by the committee.

On behalf of the East Coast Ticket Brokers Association, we thank you for providing our industry with an opportunity to address you today.

[The prepared statement of Barry E. Lefkowitz follows:]

PREPARED STATEMENT OF BARRY E. LEFKOWITZ, EXECUTIVE DIRECTOR, EAST COAST TICKET BROKERS ASSOCIATION

Chairman Swift, Members of the Committee, I am Barry Lefkowitz, Executive Director of the East Coast Ticket Brokers Association.

We thank you, Mr. Chairman, Congressman Dingell, Prime Sponsor and Congressman Conduit for the introduction of H.R. 4995. In addition, we thank you for providing our industry the opportunity to appear before you today to speak in favor of H.R. 4995. As an industry, we are most desirous to become a contributing partner in the quest to provide consumer protection and disclosure.

The East Coast Ticket Brokers Association was established in May of this year. Our present membership consists of ticket brokers from Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia and the District of Columbia. We expect that, within the next six months, based on the present trade association model established by the East Coast Ticket Brokers Association, the industry will be national in scope We are determined to develop self regulation, improve the efficiency of the industry, and maintain ethical standards within the ticket brokerage business. In our efforts to provide consumer protection, as is the goal of H.R. 4995, we have established both a consumer "hotline" and a "mediation panel" to address the concerns of ticket purchasers.

With the Committee's indulgence, I would like to share some brief insights about our industry.

When Secretary Peña requested comments regarding expansion of the "Super Bowl Rule," we responded immediately with a variety of recommendations that would protect consumers and provide for proper redress. (See Attachment A.)

Our clients are individuals and business people who are unable to stand in line, wait "on hold" on the telephone, or need last minute help. These customers depend on the brokerage business to obtain their tickets and trust they will be assured the best quality seats at the most reasonable prices. They consider the personalized service and quality of tickets worth the price. Our member brokers provide full disclosure to their clients so that they know their seat locations and the return policies. For example, I received a postcard from one of our member's clients who said, "I am a paraplegic and unable to dial a phone or stand in line. Without ticket brokers, I never would be able to enjoy going to a concert."

As good business people, ECTBA members have been reaching out to the community on a regular basis. Our way of doing this has been by contributing tickets to concerts, sporting events and special events to provide an opportunity for those who might otherwise not have a chance to see a show or sporting event. When 84 Irish citizens were stranded in Boston during the World Cup Matches, my brokers provided them with complimentary tickets to Ireland-Norway game at the Meadowlands in New Jersey. (See Attachments B, C, D, & E.)

H.R. 4995 forms the foundation for consumer protection and public disclosure. Ticket purchasers have a right to know what they are paying for.

Section 3 of H.R. 4995 provides the basis for proper public awareness.

However, I believe that Section 3, part (1) needs to be amended as it relates to the question of "any fee, charge or assessment to be imposed beyond the face value of the ticket." In the State of New Jersey, tickets sold at the Meadowlands venue contain fees and charges already value printed on the ticket. Under H.R. 4995, Ticket Master in New Jersey would not have to input any information on the ticket for public disclosure since their charges are not above the face value listed on the ticket.

If the Meadowlands is capable of this kind of contractual agreement with Ticket Master, than any venue in the country would be able to arrange similar contracts. Without language to correct this problem, the law would easily be skirted.

We are concerned that Section 3(2) is subject to misinterpretation.

We are in favor of full disclosure. However, if a ticket broker were required to mark the broker's additional service charge on the ticket itself, important information which the venue needs to process the ticket could be obscured. Also, we fear that venues may unfairly discriminate against patrons who had sold unneeded tickets to brokers. Therefore, we suggest that Section 3(2) be clarified to show that the fee may be "on *either* the ticket or on a receipt..."

We believe that referring to ticket brokers in H.R. 4995 is an important aspect for consumer protection. Our customers would be informed of the face value of the ticket, (most of our brokers already do so), and their cost to purchase the ticket.

In our discussions with your staff, we recommended that it would also be important to define the term "ticket broker," as we do in legislation presently being considered by the New Jersey Legislature and in the near future, by New York, and Connecticut. (See Attachment G.)

We think it is in the public's best interest to deal with legitimate small businesses.

You can see, Mr. Chairman, that our members are very serious about our role in protecting consumers and being legitimate brokers. We are prepared to work with you, Mr. Chairman, the Members of the Committee and staff to pass this pro consumer legislation.

As I stated earlier, we see this legislation as the foundation. We stand ready to recommend additional areas for future consideration by the Committee.

Once again, on behalf of the East Coast Ticket Brokers Association, we thank you for providing our industry with the opportunity to address you today.

ATTACHMENT A

East Coast Ticket Brokers Association

1305 Mt Holly Road, Burlington, NJ 08016
Phone 609-386-7414 FAX: 609-386-5887

Barry E Lefkowitz, Executive Director

Docket Clerk
Docket No. 49385
Rm 4107
Department of Transportation
400 Seventh Street SW
Washington, DC 20590

Dear Secretary Pena:

As Members of the ticket broker industry we would like to commend you for your efforts to deal with a potential problem. We believe that consumer protection is critical and that the consumer has the right and expectation to receive goods and services promised to them.

In order for the proper redress for consumers and the crafting of appropriate rules and amending existing rules, please find below our responses and suggestions to Docket NO. 49385:

A. The rules should be extended to all events. There are many events other than sports that are considered national in scope and draw people from all over the country e.g. Barbara Streisand Las Vegas, Spoletto (Charleston, SC) or the Passion Play. These citizens have just as much right to protection afforded someone attending the Super Bowl.

B. The rules should apply to both chartered and scheduled flights. A consumer's expectation is the same whether or not the flight is a normal scheduled carrier or charter special for the occasion. We cannot adequately respond to the issue of the appropriate "part" that the rule should be contained. This is a technical aspect somewhat beyond our area of expertise.

C. A rule restricting advertising and promotions, unless having the tickets in hand, would be a disservice to consumers, the tour package industry and ticket brokers. Events such as the Super bowl, NCAA Final Four, World Series, World Cup Soccer and etc. do not have tickets available in advance. More often than not tickets are not available until a week before the event takes place. Air flight and hotel reservations, in order to save consumers money and to be affordable to others, must be made well in advance.

What is needed to protect consumers would be a policy requiring clearly

stated ticket policies of whether the tickets are guaranteed or is a tentative order which is referred to as "Try and Get" in the industry. This ensures that a consumer understands their options before purchasing the package. Therefore we strongly disagree with 380.18a, 399.87, and 380.31 (c).

On the other hand we urge that the rules regarding money back guarantee as articulated in 380.32-380.33 be extended to all events.

D. We believe that rules procedurally should include a partial refund of those parts of a contracted tour package not delivered. The refund of that part of the package should be based on fair market value, which can usually be established. If there is no agreement between the parties, than there should be an arbitration mechanism established to resolve the conflict.

E. A package that guarantees a consumer a ticket or tickets at a set price must deliver that ticket or tickets at the stated price. The only exception to this rule would apply if the original package stated that the price of the ticket or tickets were subject to fluctuating market conditions, thus prices could be subject to change.

F. The practice of advertising packages to events that do not include tickets to the event should not be banned, but prominent disclosure be made that admission to the event is not included in the package.

G. The economic burdens created by the rule would be a disservice to the consumer, tour package providers and ticket brokers. As stated in response C. the rule would be impractical if it attempted to broadly cover all events with the guarantee policy. This is why we suggest the use of guarantee and tentative order ("Try and Get") policies to ensure consumer awareness of both the situation and status of the tickets.

As an industry we believe it is imperative that the rules or legislation be submitted that requires "Ticket Brokers" to be licensed and bonded to ensure the greatest possible consumer protection. Ticket brokering is an interstate business and as such should be recognized and licensed nationally. Under a national licensing mechanism an Arbitration Panel could be established to respond to issues of agreements between consumers and brokers, travel industry businesses and brokers, and the broker industry itself.

We would welcome the opportunity to discuss these points further with the appropriate officials with the Department of Transportation.

ATTACHMENT B

Stranded Irish soccer fans get lift as broker group supplies tickets

By KINGA BORONDY

A group of 80 Irish soccer fans, gypped out of their World Cup tickets by an English travel agency, received replacement tickets to both remaining games, with the East Coast Ticket Brokers Association supplying ducats for the Tuesday match at Giants Stadium.

"We saw something wrong and we wanted to correct it," said Barry Lefkowitz, executive director of the broker association based in Burlington. The association represents about 60 brokers in New York, New Jersey, Connecticut, Pennsylvania, Maryland, Virginia and Washington, D.C.

"One member saw a story about the fraud and said we should do something about this," Lefkowitz said.

So the association cast about for tickets, finding one for each of the stranded fans for the match against Norway on Tuesday. The World Cup office in Orlando, Fla., found each fan a ticket for the game there against Mexico today.

"It was a bitter disappointment that some of the lads didn't get to see the Italy-Ireland match Saturday," said Jerry McGrath, one of the lucky few who had a ticket for the game last Saturday. Twenty members of the group found tickets for the match, but the rest were forced to watch it on television in a pub in Boston.

"I paid $150 for a $30 seat," McGrath said. "But the Italy match was the most important, seeing as Ireland won."

The group was part of a contingent of about 400 fans who paid $1,800 for World Cup tour packages and then learned that they had neither the tickets for the matches nor the transportation between cities.

The smaller group arrived in Boston last Thursday, while 300 others flew directly to Orlando, where they were left stranded without hotel reservations.

Those arriving in Boston were met by a representative of the English tour operator, Sportex of London, who left them at the Days Inn in Saugus, Mass. The tour guide told the group he would return with the airline tickets and game tickets and then disappeared, McGrath said.

"The next thing we get is a fax saying the company is going into liquidation (bankruptcy)," McGrath said.

While the (Saugus) hotel bill is paid in full and the fans still have their tickets home, the promised World Cup tickets, airline tickets to New Jersey and Florida and hotel reservations are missing.

Balder Battu, a London lawyer hoped that a "rescue package" could be arranged.

The ticket broker association wanted to ensure that the Irish visitors did not leave with a bad impression of America. "But the brokers did not want individual credit," Lefkowitz said. So Rep. Walter Kavanaugh (R-Somerset), who will be attending the Tuesday match with an Irish friend, will hand-deliver the tickets to the fans outside Giants Stadium.

"We want the Irish to know we will come through," Lefkowitz said. "We want to be known as people who are committed to the community."

ATTACHMENT C

C

NATHANIEL EXUM
24TH LEGISLATIVE DISTRICT
PRINCE GEORGE'S COUNTY
DEPUTY MAJORITY WHIP
COMMITTEES:
ECONOMIC MATTERS
SUBCOMMITTEE ON BI-COUNTY
MEMBER:
MARYLAND LEGISLATIVE BLACK CAUCUS
NATIONAL BLACK CAUCUS OF STATE LEGISLATORS
NATIONAL CONFERENCE OF STATE LEGISLATORS

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401-1991

DISTRICT OFFICE
1801 BRIGHTSEAT ROAD
LANDOVER, MARYLAND 20785
(301) 772-2801

July 20, 1994

Mr. Barry E. Lelkowitz
Exeuctive Director
EAST COST TICKET ASSOCIATION
1301 Mt. Holly Road
Burlington, NJ 08016

Dear Mr. Lelkowitz:

I express to you our appreciation on behalf of all of the children, who were able to attend the baseball game. All of them enjoyed the game, because of you. Thanks again, for I remain,

A servant of the people,

Nathaniel Exum

Nathaniel Exum

Dear Mr. Lefkowitz

On Behalf of My Troop 730 I wish to express my Sincere Thanks To you For The 35 Baltimore Oriole Tickets For The 4th of July.

I can only assure you That A good Time will Be had By All.!

Sincerely Yours,
Charles Slagle
Scout Master Troop 730

ATTACHMENT D

D

DDI FOUNDATION

DEVELOPMENTAL
DISABILITIES INSTITUTE

DDI FOUNDATION

DDI ENTERPRISES

99 HOLLYWOOD DRIVE
SMITHTOWN
NEW YORK 11787

(516) 366 2900
Fax (516) 366 2997

April 29, 1994

Mr. Mike Schwartz
President
East Coast Ticket Association
1305 Mount Holly Road
Burlington, NJ 08016

Dear Mr. Schwartz:

On behalf of Developmental Disabilities Institute (DDI), please accept my sincere appreciation for your recent donation of 15 tickets to the Ice Capades. They are going to be used by the children who participate in our residential programs.

Our goal is to enable every infant, child and adult served by the Institute to reach his or her highest potential. Thanks to the generosity of people like yourself we are realizing this ambition.

Your continued support is very much appreciated.

Most sincerely yours,

Martin D. Hamburg, Ph.D.
President

EDUCATION · SERVICE · RESEARCH

Supporting The Work Of
The Developmental Disabilities Institute

86-468

ATTACHMENT E

E

The Arc of Bergen and Passaic Counties, Inc.
223 Moore Street, Hackensack, NJ 07601
TEL: (201)343-0322 · FAX: (201)343-0401

3 August 1994

Barry Lefkowitz, Executive Director
East Coast Ticket Brokers Association
1305 Mt. Holly Road
Burlington, NJ 08016

Dear Mr. Lefkowitz:

I am writing on behalf of the consumers served by our programs to thank you for the 25 tickets to the Giants/Cleveland football game this Saturday.

Recreational opportunities are not supported by any of our traditional funding sources and, so, the opportunity to attend this game is most appreciated.

Again, our thanks.

Sincerely,

Jim Seath

James E. Seath
Executive Director

JES:ec

ATTACHMENT G

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JU 0124
SR XXXX
TR XXXX

G

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 1878 and 1257

STATE OF NEW JERSEY

BY ASSEMBLYMEN KAVANAUGH, MALONE, ROCCO and SOLOMON

AN ACT concerning the resale of tickets of admission to places of entertainment and amending P.L.1983, c.135.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*:

1. Section 1 of P.L.1983, c.135 (C.56:8-26) is amended to read as follows:

1. As used in this act:

a. "Director" means the director of the Division of Consumer Affairs in the Department of Law and Public Safety.

b. "Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

c. "Person" means corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals.

d. "Place of entertainment" means any privately or publicly owned and operated entertainment facility within [the] this State [of New Jersey] , such as a theater, stadium, museum, arena, racetrack or other place where performances, concerts, exhibits, games or contests are held and for which an entry fee is charged.

e. "Ticket" means any piece of paper which indicates that the bearer has paid for entry or other evidence which permits entry to a place of entertainment.

f. [("Ticket agent" means any person who is involved in the business of selling or reselling tickets of admission to places of entertainment who charges a premium in excess of the price, plus taxes, printed on the tickets.] (Deleted by amendment, P.L. , c.).

g. "Ticket broker" means any person situated in and operating in this State or in another state who is involved in the business of reselling tickets of admission to places of entertainment to State residents and who charges a premium in excess of the price, plus taxes, printed on the tickets, but does not include a business selling tickets on consignment.

(cf: P.L.1983, c.220, s.1)

2. Section 2 of P.L.1983, c.135 (C.56:8-27) is amended to read as follows:

2. No [person] ticket broker shall engage in or continue in the business of reselling tickets for admission to a place of entertainment without meeting the following requirements:

a. Owning, operating or maintaining [an] a permanent office, branch office, bureau, agency, or other place of business, not

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

including a post office box, for the purpose of reselling tickets [in this State; and];

b. Obtaining a license to resell or engage in the business of reselling tickets from the director ;

c. Listing his license number in any printed advertisement or solicitation;

d. Maintaining records of ticket sales, deposits and refunds for a period of not less than three years from the time of any of these transactions;

e. Disclosing to the purchaser by means of verbal description or a map, the location of the seat or seats represented by the ticket or tickets;

f. Disclosing to the purchaser the cancellation policy of that broker;

g. Disclosing that a service charge is added by the ticket broker to the stated price on the ticket or tickets and is included by the broker in any advertisement or promotion for an event;

h. Disclosing to the purchaser, whenever applicable, that the ticket broker has a guarantee policy. If a ticket broker guarantees delivery of a ticket or tickets to a purchaser and fails to deliver the ticket or tickets, the ticket broker shall provide a full refund for the cost of the ticket or tickets and pay a penalty, determined by the director, for each failure to deliver, provided that the penalty shall not exceed the quoted price of the ticket or tickets, or $500, whichever is less;

i. Disclosing to the purchaser of a ticket or tickets when he is utilizing a tentative order policy, popularly known as a "try and get." When a ticket broker fails to obtain a ticket or tickets on a "try and get" basis, the broker shall refund any deposit made by a purchaser of such ticket or tickets within a reasonable time;

j. When guaranteeing a ticket or tickets in conjunction with providing a tour package, a ticket broker who fails to provide a purchaser with such ticket or tickets shall refund fully the price of the tour package and ticket or tickets and pay a penalty, determined by the director, which shall not exceed $1,000; and

k. Providing to a purchaser of a ticket or tickets who cancels an order, a full refund for the cost of the ticket or tickets less shipping charges, if such ticket or tickets are returned to the broker within three days after receipt; provided, that when a ticket or tickets are purchased within seven days of an event, a refund shall be given only if the ticket or tickets are returned within one day of receipt; and provided, that no refund shall be given on any ticket or tickets purchased within six days of an event unless the ticket broker is able to resell the ticket or tickets.

(cf: P.L.1983, c.220, s.2)

3. Section 3 of P.L.1983 c.135 (C.56:8-28) is amended to read as follows:

3. a. The division shall prepare and furnish to applicants for licenses application forms and requirements prescribed by the director pertaining to the applications for and the [issuances] issuance of licenses to ticket brokers.

b. Every applicant for a license to engage in the business of reselling tickets as a ticket broker shall file his written

application with the division on the form furnished by, and consistent with, the regulations prescribed by the director.

c. Each application shall be accompanied by a fee [which shall be determined by the director] of $2,000, and a description of the location where the applicant proposes to conduct his business.

d. Every applicant for a license to engage in the business of reselling tickets shall provide information, in a form satisfactory to the director, demonstrating that he is a member in good standing of a ticket broker trade association that has been in existence for at least one year, and which association operates a mediation panel to deal with consumer issues and provides the public with access to a consumer hot line.

(cf: P.L.1983, c.135, s.3)

4. Section 4 of P.L.1983, c.135 (C.56:8-29) is amended to read as follows:

4. a. Upon receipt of the completed application, fee and bond, if any, and when the director is satisfied that the applicant has complied with all of the requirements of this act, the director shall grant and issue a license to the applicant.

b. The license granted may be renewed for a period of [two years] one year upon the payment of a renewal fee [which shall be determined by the director] of $2,000.

c. No license shall be transferred or assigned without the approval of the director. [No] Any request for a change in the location of the premises operated by [the] any licensee situated in and operating in this State shall be [made except by permission of the director, and upon payment of a fee established by the director] submitted to the director in writing no less than 30 days prior to that relocation. The license shall run to January 1 in the second year next ensuing the date thereof unless sooner revoked by the director.

(cf: P.L.1983, c.135, s.4)

5. Section 5 of P.L.1983 c.135 (C.56:8-30) is amended to read as follows:

5. The director shall require the applicant for a license to engage in the business of reselling tickets as a ticket broker to file with the application a bond in the amount of [$10,000.00] $15,000 with two or more sufficient sureties or an authorized surety company, which bond shall be approved by the director

Each bond shall be conditioned on the promise that the applicant, his agents or employees will not be guilty of fraud or extortion, will not violate any of the provisions of this act, will comply with the rules and regulations promulgated by the director, and will pay all damages occasioned to any person by reason of misstatement, misrepresentation, fraud or deceit or any unlawful act or omission in connection with the provisions of this act and the business conducted under this act.

(cf: P.L.1983, c.135, s.5)

6. Section 8 of P.L.1983, c.135 (C.56:8-33) is amended to read as follows:

8. [Each place of entertainment shall print on the face of each ticket and include in any advertising for any event the price charged therefor. Except for tickets printed prior to the enactment of this act, each ticket shall have endorsed thereon

the maximum premium not to exceed 20% of the ticket price or $3.00, whichever is greater, plus lawful taxes, at which the ticket may be resold.] No person operating on consignment shall [resell,] sell or offer to [resell, or purchase with the intent to resell] sell a ticket [at any premium in excess of the maximum premium as set forth in this act] for admission to a place of entertainment at a premium in excess of 25% of the ticket price or $3.50, whichever is greater, plus lawful taxes.
(cf: P.L.1983, c.220, s.3)

7. Section 9 of P.L.1983, c.135 (C.56:8-34) is amended to read as follows:

9. a. No person shall sell, offer to sell, resell, offer to resell or purchase with the intent to resell any ticket, in or on any street, highway, driveway, sidewalk, parking area, or common area owned by a place of entertainment in this State, or any other area adjacent to or in the vicinity of any place of entertainment in this State as determined by the director; except that a person may resell, in an area which may be designated by [the] a place of entertainment in this State, any ticket or tickets originally purchased for his own personal or family use at no greater than the lawful price permitted under this act.
(cf: P.L.1983, c.220, s.4)

8. (New section) A purchaser of a ticket or tickets who places a special order with a ticket broker for a ticket or tickets that are not in stock or are obtained for a purchaser's specific need and are paid for in advance by the ticket broker, shall not be eligible to receive a refund for that purchase unless the ticket broker is able to find someone else to purchase the ticket or tickets as long as the purchaser is notified in advance of this policy.

9. (New section) a. There is established a Ticket Broker's Mediation Panel in the Division of Consumer Affairs in the Department of Public Safety, which shall consist of six members: one of whom shall be the Director of the Division of Consumer Affairs or his designee; and five of whom shall be licensed ticket brokers to be selected by the Governor. Of the public members, three shall be representatives of ticket brokers from the southern region of this State, one shall be a representative from the central region of New Jersey, and one shall be a representative from the northern region of New Jersey. Of the public members first appointed, one shall be appointed for a term of one year; two for a term of two years and two for a term of three years. Their successors shall be appointed for terms of three years. The director shall serve as chairperson of the mediation panel. A vacancy occurring in the membership of the mediation panel for any cause, other than the expiration of term, shall be filled by the Governor and the person so appointed shall hold office for the unexpired term of the member whose office has become vacant.

b. Members of the Ticket Broker's Mediation Panel shall serve without compensation for performing their duties as members, but the director may, within the limits of funds appropriated or otherwise made available therefor, reimburse public members for the actual expenses necessarily incurred in the performance of their duties.

c. The Ticket Broker's Mediation Panel shall participate in hearing and making recommendations that are not binding regarding questions brought before it involving controversies concerning contractual agreements between purchasers and ticket brokers and between ticket brokers.

10. This act shall take effect immediately.

Establishes requirements for ticket brokers concerning the resale of tickets of admission to places of entertainment.

Mr. MANTON. Thank you.
Mr. Wood.

STATEMENT OF WILLIAM A. WOOD

Mr. WOOD. Mr. Chairman and members of the committee, my name is Bill Wood. I'm the consumer education director for the U.S. Public Interest Research Group Education Fund. PIRG's are nonprofit, nonpartisan consumer and environmental advocacy organizations with over one million members around the country, including thousands of college students, many of whom are consumers of these tickets to premiere events.

We appreciate the invitation to speak before you today. Although we are new to the issue of consumer abuses in the ticketing industry, we have a long record of working on consumer protection issues generally and outrageous consumer ripoffs in particular.

PIRG supports the bill before you, the Ticket Fee Disclosure Act, as a small but good first step to address consumer abuses in the ticketing industry.

In preparation for our testimony today we conducted a quick survey to State PIRG's around the country this past week. Of approximately 80 events in 10 States serviced by Ticketmaster, what we found was, in my view, appalling. Ticketmaster, the 800 pound gorilla in the ticketing industry and in many places the only gorilla in town, rips off consumers. It charges outrageous, monopolistic and often undisclosed fees for its services.

Our survey found, for example, that on average Ticketmaster's service and handling fees added $5.10 in additional costs or 27 percent to the face value of the ticket. Ticketmaster charges service fees for every ticket sold regardless of whether a consumer buys one ticket or 100. For so-called family events, like the circus, Ticketmaster usually only charges $1.75 or less per ticket and caps the total fees at $7 per order.

Portland, Oregon, one of the few markets in the country that has competition in the ticketing industry, had ticket service charges there that averaged over $1 less or over 25 percent less than they do nationally.

Finally, while Ticketmaster has claimed today that it and its licensees support disclosure, at least two-thirds of the Ticketmaster agents that we surveyed on the phone said that their service charges were not disclosed separately on tickets.

PIRG urges the subcommittee and the Congress to look at comprehensive solutions to the problem of consumer abuses in the ticketing industry.

A partial list of these would include, for example, banning what some have alleged are kickbacks whereby venues, theaters, arenas, et cetera, get a percentage of the service fees back from Ticketmaster.

Banning or regulating long-term contracts between venues and the ticketing companies that exclude competition to the detriment of consumers.

Capping service fees, for example, at 10 percent of the face value of a ticket and/or at one charge per order, not per ticket.

Requiring disclosure of service fees on the tickets themselves, not just on a separate receipt, as well as in all advertising for the event.

Finally, supplementing Representative Condit's inquiry of the Antitrust Division of the Justice Department about why the Department allowed the merger of Ticketmaster and Ticketron to go forward when it knew it was going to result in a monopoly with long-term contracts.

I believe the Energy and Commerce Committee and the Congress faced a similar situation several years ago when they looked at alternative operator service companies, which were companies that controlled phones at institutions, at hotels, airports, universities, et cetera, and would charge outrageously high fees, 2 or 3 or even 10 times the fees that other long distance carriers would charge but you couldn't get access to your long distance carrier on those phones. Congress banned that practice. I think they should look at this as a similar situation. Although I am not an attorney or an expert on antitrust law, this seems from what other people have written to be an example of the bottleneck provision of the antitrust law for an essential service.

Finally, I think Congress should act quickly because the gorilla keeps growing. There is an effort by Ticketmaster to move into the market for advanced ticketing for movies and not just for live events. You may find soon, if you don't act, that when you and your family want to go to, say, the Washington, DC exclusive of Schindler's List or The Lion King or True Lies, or whatever, that you have to pay an additional service fee to get a ticket to the show, and it won't be disclosed and you won't have any other option to get into the show.

I think there is competition in other ticketing, which proves that it is doable, it is feasible in the live event ticketing industry. We can call a travel agent and get various quotes for various flights and then call another one to tell them to compete. It should be feasible in the ticketing industry as well but right now that is not the case.

Thank you very much.

[The prepared statement of William A. Wood follows:]

Testimony of

William A. Wood

Consumer Education Director,
U.S. Public Interest Research Group
Education Fund

Introduction

Mr. Chairman and members of the Committee: my name is Bill Wood, and I am testifying on behalf of the U.S. Public Interest Research Group Education Fund. U.S. PIRG is the national lobbying office for state PIRGs, and the Education Fund is the research and education arm of U.S. PIRG. PIRGs are non-profit, nonpartisan consumer and environmental advocacy groups with over one million members around the country.

We appreciate the invitation of the Chairman to speak before you today. While U.S. PIRG is new to the issue of consumer abuses in the ticketing industry, we have a long history of working for consumer protection generally, and against outrageous consumer ripoffs in particular.

U.S. PIRG supports H.R. 4995, the "Ticket Fee Disclosure Act of 1994," as a small but good first step to address consumer abuses in the ticketing industry. We feel, however, that the Subcommittee and the Congress need to go significantly beyond the steps that the bill before you would take.

Additional recommendations

U.S. PIRG urges the Subcommittee and the Congress to look at comprehensive solutions to the problem of consumer abuses in the ticketing industry. A partial list of initial consumer protection measures that we would urge you to consider includes:

- banning what some have alleged are "kickbacks," whereby venues (theaters, arenas, etc.) get a percentage of service charges collected by Ticketmaster. The current situation creates a perverse incentive for venue owners to support higher service charges, rather than protecting consumers through marketplace competition.

- banning or regulating long-term contracts between venues and ticketing companies, which restrict competition and distort the market, to the detriment of consumers.

- capping service charge fees, for example at 10% of the face value of tickets and/or at one charge per *order*, not per ticket. Consumers are willing to pay a reasonable fee for the convenience of ordering tickets in advance over the phone. The Kennedy Center and other venues, however, as well as Ticketmaster itself, have demonstrated that this service can be provided for far less than is currently the case.

- requiring disclosure of service fees, *on the ticket itself*, not simply on a separate receipt or orally.

- supplementing Rep. Condit's inquiry of the Antitrust Division of the Justice Department with one of your own, about why Ticketmaster's acquisition of major assets of Ticketron was allowed to go forth without placing limitations on long-term contracts between Ticketmaster and venues. These long-term contracts inhibit the entry of new players into the virtual monopoly market controlled by Ticketmaster, thus hurting consumers.

The PIRG survey

What I have learned in the past several days, as we have begun to research this issue, I find

appalling. As all of you probably know already, Ticketmaster, the 800 pound gorilla in the ticketing industry, and in many places the only gorilla in town, rips people off. Ticketmaster charges outrageous, unavoidable and undisclosed fees for its services. It is able to do this because it knows there is virtually nowhere else for a consumer to go in the marketplace.

Why do I term Ticketmaster's fees outrageous? Earlier this week a number of the state PIRGs conducted a quick and simple survey of Ticketmaster fees for several sample events in cities in their states. We surveyed approximately 80 events in 10 states and Washington D.C., from New York to Florida to Illinois to California. Although this was a small survey by our standards, we believe its results are representative of the problem nationally.

We found that Ticketmaster usually charges both a per-ticket fee and a per-order "handling charge" for phone orders. The per-ticket fee is applied to every ticket, whether you order one ticket or 100. Obviously the transaction takes the same amount of time and effort for Ticketmaster, regardless of how many tickets a consumer purchases. Consumers bear the burden of these unjustifiable per-ticket fees. Ticketmaster's justifications for these fees, that the ticket is the "unit of measure" in the industry, sound, at least to this consumer group, absurd on their face. Additionally, Ticketmaster itself caps its per-ticket fees at the equivalent of fees for four tickets, for numerous "family" entertainment events like circuses.

In our survey, we found that Ticketmaster fees averaged $3.75 per event per ticket in markets where they exercise a virtual monopoly. This added an average of 20% to the stated price of a ticket. This average service charge, though, needs to be broken out further to understand the nature of some of Ticketmaster's abuses of consumers.

For so-called "family" events, like the circus or Walt Disney's World on Ice, Ticketmaster's fees in our survey were often only $1.75 per ticket. For rock concerts and other similar popular events, Ticketmaster's fees were significantly higher. For example, for the Rolling Stones concert in Los Angeles, the Ticketmaster service fee is $7 per ticket, for $25 tickets -- a surcharge of 28%. Why the difference?! The company is providing the same service in both cases.

Even more interestingly, Ticketmaster often caps its service charges for "family events." For example, total service charges for Walt Disney's World on Ice may be capped at $7 per order, or the equivalent of the service charges for four tickets. So if you're taking a half dozen of your child's friends to the circus for his or her birthday party, you don't pay a half dozen service charges. Why are they able to do this for family events, but not for all their tickets? With the exception of these family events, we found no examples of caps on Ticketmaster service charges.

In Portland, Oregon, where there is some competition between Ticketmaster and a locally owned ticket service (FASTIXX), average prices in our survey were significantly less than in our survey nationally. Here average survey fees were $2.73, over $1 less than in other cities, or over 25% cheaper.

Examples of Ticketmaster Service Charges in PIRG Survey, 9/94

Event	TM service chrg per *ticket*	% incrse of ticket cost	TM handling chrg per *order*	Total svc. + hdl. – 1 Ticket	% incrse – 1 ticket	Service charges capped?
Walt Disney's World on Ice	$1.75	17%	none	$1.75	17%	yes, at $7 (=4 tkts)
Bob Dylan	$5.50	22%	$2.00	$7.50	30%	no cap
Survey Average:	$3.75	20%	$1.77	$5.10	27%	only "family" events

Why disclosure alone is not enough

Disclosure is very important, but the nature of this beast will not be tamed by disclosure alone. Disclosing to someone that you are extorting them does not solve the problem of extortion. Disclosure only works if consumers have viable alternative options, by which they can seek a lower service charge or no service charge.

Here in Washington, Wolf Trap and the Kennedy Center do not use Ticketmaster. Wolf Trap's tickets are sold through Pro-Tix, a start-up competitor to Ticketmaster, which Wolf Trap chose several years ago after a series of bad experiences with Ticketmaster. Service charges at Wolf Trap consistently run a dollar or more less per ticket than they do for comparable Ticketmaster events in the D.C. area. I went to see Twyla Tharp at The Kennedy Center several weeks ago, and found that their service charges ran about $1.60 per ticket.

Clearly, Ticketmaster's service charges have little or no relation to the business cost of providing ticketing services. Instead, as you will learn the more you investigate consumer abuses in the ticketing industry, Ticketmaster's fees have much more to do with a monopoly gouging consumers in a captive market, and with what some would refer to as or allege are kickbacks to venues and promoters.

Consumers (and consumer groups like U.S. PIRG) are not averse to paying a reasonable fee for a quality service and/or convenience, when they have a choice in the marketplace. If they do not wish to pay such a fee, though, they need to have a viable option to look for alternatives, and to avoid it, or they are being ripped off.

For consumers buying tickets, there basically is no free market. There are no choices or alternatives, there is no competition. If you want a ticket to the most popular event, too often you are essentially forced to go through Ticketmaster, and pay their outrageous fees.

Many popular events sell out in minutes through Ticketmaster's phone services. The box office may not even open when the phone lines for orders do. Even if you're willing to drive to the box office to avoid service fees, a show may sell out on the phones while you're driving there. In our survey, we found numerous venues whose box offices function themselves as Ticketmaster outlets, meaning there is no way to avoid the service charge. The ticket is simply not available at its face value. Ticketmaster has been accused by more than one player in the ticketing industry of holding back tickets to create demand, what some have termed "managed scarcity."

The problem of Ticketmaster's long-term, exclusive contracts

The Congressional hearing this past summer before Government Operations brought out many of these points already. Ticketmaster has long-term exclusive contracts with most major venues, and hundreds of smaller venues as well, in the United States. This means that all acts who wish to perform at these venues -- often the key to their livelihood -- must use Ticketmaster.

As you know, this was Pearl Jam's experience when they attempted to go around Ticketmaster, and organize concerts independently of the company at suitable venues around the country. They were subjected to what they termed a group boycott, and have submitted a memorandum to the Antitrust Division of the Justice Department.

Rep. Condit has written to the Antitrust Division to ask them why they allowed Ticketmaster to acquire Ticketron's major assets in 1991, gaining virtually a monopoly in the ticketing business, without making the acquisition dependent on ending these long-term contracts. These contracts virtually shut-out potential new competitors, by extension hurting consumers.

This situation affects not just large groups and venues, but many smaller ones. I learned this week that the recent experience of a very talented Latin American musical group, Sol y Canto, mirrored that of Pearl Jam. Their producer wanted to schedule a concert at a smaller community venue, appropriate for their audience, and was prevented from doing so because of the venue's exclusive contract with Ticketmaster. The group had its own ticketing service, set up on the phone, but fans of the band could not use this alternative service if the band were to play at this venue. The band had to cancel its plans to perform at the community venue, despite its appropriateness in other respects.

Because of these exclusive long-term contracts, it is difficult if not impossible for significant potential competitors to break into the market controlled by Ticketmaster. Worse, the way these contracts are structured, it would not necessarily be to the advantage of consumers to have additional players in the market.

In these contracts, venues generally get a percentage of the service charges collected by Ticketmaster. Some have termed or alleged that these are "kickbacks."[1] The Miami Arena or US Air Arena or any venue with such a contract has an incentive to charge high service fees, because they get a cut. This is a perverse, reverse incentive to charge higher fees. There is no market-driven incentive that protects consumers, pushing sellers toward cheaper fees and/or better service.

While Ticketmaster may argue that long-term contracts are the norm in the entertainment industry, for food concessionaires, parking, etc., these are all optional services for a spectator. A ticket is not an optional service, and long-term contracts that restrict competition in ticketing hurt consumers by preventing marketplace competition.

A parallel -- Alternative Operator Service (A.O.S.) companies

I want to refer the Committee to a somewhat similar situation that the Energy and Commerce Committee and Congress took action on in an amazingly quick fashion several years ago. "Alternative Operator Service" (A.O.S.) companies were providing long-distance service for telephones at hotels, hospitals, airports, etc.

These AOS operators limited access to a service -- typically, pay telephones and room phones in hotels -- the same way Ticketmaster now limits access to tickets. Consumers could not access other long-distance carriers, and often were forced to pay exorbitant fees, in some cases two or three or even 10 times prevailing long-distance rates, to use these telephones.

The hosts of the phones, the hotels or whoever, got hefty commissions, as much as 20 percent, for each call made. So the market functioned to hurt consumers and help the institutions. The institutions would entertain bids from various AOS companies based on how much they would get back -- what some would term a kickback. The situation with ticketing is similar, and will not be resolved merely by disclosure nor simply by somehow ensuring that new players can enter the market.

Upon learning of the issue in 1989, Congress took swift action and passed a law in 1990 requiring A.O.S. services to allow callers to access other long-distance companies without being charged.

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[1] Ticketmaster takes extreme exception to terming these arrangements "kickbacks." As noted in this week's issue of *Rolling Stone* (10/6/94) Fred Rosen, the company's CEO, has said that the company's contract with the Meadowlands in New Jersey is a public document

The Meadowlands, however, responded to *Rolling Stone* writer Fred Goodman that 'Our lawyers say that if Mr. Rosen think's it's public, he can release it to you.' Ticketmaster failed to respond to repeated requests to see the contract, Goodman reported

The need for action – the gorilla keeps growing

Right now we believe the ticketing industry, specifically Ticketmaster, is abusing consumers in a manner similar to A.O.S.s. Congress needs to go beyond disclosure and look at the root structure of these long-term exclusive contracts with venues, which give venues a percentage of the service fees.

I am not an expert by any means on antitrust law, but a number of experts believe that this situation may fall under the "bottleneck," or essential facilities doctrine, of antitrust law.[2]

The problem is likely to get worse, not better, without Congressional action. For example, Ticketmaster is aggressively moving to control the growing new market of advance ticketing for movies.

Last April Ticketmaster bought the software company that supplies automated box office equipment to movie theaters. Increasingly, movie patrons choose to buy movie tickets in advance for popular first-run shows. If Ticketmaster consolidates its presence in this market, then the next time you or your family want to go the Uptown Theater to see the D.C. exclusive engagement of The Lion King or Schindler's List or True Lies or whatever, you may have to pay a hefty, unavoidable and undisclosed service charge.

We don't know all the solutions today, but we do know that the current situation is egregious for consumers. It's also totally unnecessary, from an objective standpoint. If you can call virtually any travel agent who can get you a seat on virtually any plane, and then call another agent to pursue a better price, there ought to be a way to foster effective competition in the event ticketing industry that benefits, not hurts consumers.

I urge the Committee to go beyond the disclosure bill before you today and look at these root problems in the ticketing industry, which have allowed Ticketmaster to gouge consumers with outrageous, unavoidable, and undisclosed fees. I urge you to adopt solutions like those in our recommendations today, noted in our earlier testimony.

Thank you for the opportunity to testify today.

See, for example, "Background Memorandum for Public Hearing, Subcommittee on Information, Justice, Transportation and Agriculture, 'Pearl Jam's Antitrust Case...,' June 27, 1994."

Mr. MANTON. Thank you, Mr. Wood.

First, some questions for Mr. Lefkowitz. Where do brokers get the bulk of their tickets? Is it true that brokers will sometimes purchase them directly from the ticket outlets on a privileged and expedited basis?

Mr. LEFKOWITZ. My understanding, Mr. Chairman, is that my brokers are similar to people waiting in line, making phone calls, that the tickets come from the secondary market and they purchase them in the same manner that other people have to.

Mr. MANTON. Ticketmaster, if you heard their testimony, indicates that they are merely agents. Brokers would be principals, would they, where they take down these tickets for their own account and then subsequently resell them in the secondary market?

Mr. LEFKOWITZ. Ticket brokers are resellers of tickets we have gone out on the market and purchased.

Mr. MANTON. They are purchased in advance of sale to the ultimate consumer?

Mr. LEFKOWITZ. In many cases, that is correct, Mr. Chairman.

Mr. MANTON. But not all cases

Mr. LEFKOWITZ. No. In some cases we have people who will come to us at the last second where they have tickets where someone might have been ill and was not able to attend a concert or a show or something, and they will offer the tickets to a broker to sell. We've even had a case in New Jersey where a legislator because of a legislative session came to one of our brokers and exchanged tickets for the particular day that he was going to be in session for another day in which the legislature was not going to be in session.

Mr. MANTON. Would you say you are a competitor of firms like Ticketmaster?

Mr. LEFKOWITZ. Some people say that in fact ticket brokers are a legitimate form of competition, that because we provide a service to a particular kind of client base and customers, because of the fact that we are there, that people don't have to wait in line, or there is a problem in terms of being able to try and get through on the phone, that we represent some form of competition.

Mr. MANTON. What kind of convenience charge or handling charge would you add to a ticket price?

Mr. LEFKOWITZ. My understanding is that there is not necessarily a convenience charge but that the brokers, like, I guess, commodities brokers, or whatever, they go out on the market, buy the tickets, and then add to it a reasonable charge that they feel the market will bear in terms of paying for it, recognizing that as the industry has grown over the last few years in terms of the number of brokers that that competition provides a healthy competition within ticket brokers, which helps stabilize prices.

Mr. MANTON. Do you now indicate on your receipt that this is the price of the ticket and this is the reasonable service charge, or whatever you might call it?

Mr. LEFKOWITZ. As a matter of fact, Mr. Chairman, it is my understanding that many of our brokers, the ones that at least I represent from the East Coast Ticket Brokers Association, very clearly on the receipts have the face value of the ticket, what the charge is for the ticket, and also have a statement regarding the fact that the price of the ticket reflects the difficulty in having been able to obtain the ticket for them.

Mr. MANTON. Large percentages of tickets for an event are sold directly by the venue itself and by the performers. Are these normal sources of tickets for brokers, and if so, will they pay a price for these tickets that is different from that paid by a consumer purchasing them individually?

Mr. LEFKOWITZ. I know of no actual situation in which our brokers directly deal with any promoters. I do know, Mr. Chairman, that often we have people who will come into the offices of brokers with attaches of tickets and they will sell those tickets to our brokers. Obviously, as business people they have a product that we are seeking for our customers and clients, and therefore we will negotiate a price with them and then be able to in turn meet the needs of our clients.

Mr. MANTON. So there is sort of a marketplace type of negotiation?

Mr. LEFKOWITZ. As in all marketplaces, yes.

Mr. MANTON. Mr. Wood, as a result of your survey, do you feel that you could make some general conclusions as to what pricing strategies are in play here? For example, it appears that family events may have fewer charges as a percentage of total ticket prices than, say, rock concerts. And I think you mentioned the circus in your testimony. Is that a fair conclusion?

Mr. WOOD. Certainly from our survey they have fewer charges. They have lower charges and they have caps on charges. Obviously, I don't think Ticketmaster is selling those tickets as a charity. I think they are making money on those fees as well.

Mr. MANTON. What can you discern from that pricing strategy differential? Why are they pricing these family events at less charge than the concerts?

Mr. WOOD. I really don't know why. You'd have to ask them. I would guess that it has something to do with public relations. It's a family event and they tend to cap the service charges at the equivalent of four tickets, which would be, say, a typical family. So if you were to take additional children to a circus or Ice Capades type thing, you wouldn't pay the service fees for those. Other than public relations, I don't know why they would do that.

Mr. MANTON. I don't know if you were in the room when Mr. Goldstein testified and I asked him the difference between the convenience charge and the handling charge. If I understood it correctly, he said the convenience charge was on every ticket but if there was a multiple order there would only be one handling charge. Do you agree with that?

Mr. WOOD. That is how it works. On these family events, by contrast, there is a convenience charge per ticket but they will only charge it for the first four tickets. So if you buy six ticket, you would pay four handling charges. So that would cap at about $7. They usually, in our survey, also waived the handling charge. So

you wouldn't pay for that even if you were ordering over the phone and getting them in the mail.

Mr. MANTON. You mentioned that at least anecdotally it appears that when there is a competition in ticket sales the cost of these surcharges go down. How much actual data do you have on that?

Mr. WOOD. The only place that we knew of where there was competition—there may be other places that the committee can learn of—was in Portland, Oregon. There is a locally owned ticketing business called Fastix. The average service charges for the events we surveyed in that market were a dollar less per ticket than they were nationally in the places where Ticketmaster controlled the market.

I should say that with respect to competition that right now even in that situation there isn't necessarily effective competition where you are a consumer being protected by people offering the best service at the lowest price. As Mr. Condit makes reference in his statement that he submitted, when you have these long-term contracts where the venues themselves share in the service charge, there is a sort of reverse or perverse incentive for them to raise the service charges because they are going to get more income from that. So you don't have a situation where people are out offering to consumers the lowest service charge they can and still run a business.

Mr. MANTON. Is there any way we can legislate the duration of contracts? It seems to me that this is sort of a free market arrangement.

Mr. WOOD. The problem is that it's a monopoly situation. This is something that I think Mr. Condit and others are asking the Antitrust Division to look at. When Ticketmaster acquired the major assets of Ticketron it acquired these long-term contracts. So then nobody else could start up. You can't get in to negotiate with the venues, and they are the only player out there; they are the 800 pound gorilla or the only gorilla.

Mr. MANTON. Like Portland, are there any other smaller or regional competitors that your survey has uncovered?

Mr. WOOD. We didn't in our survey. It was a very limited survey. We did it Monday and Tuesday of this week. I would guess there probably are but I don't know where they are.

Mr. MANTON. Finally, I think you mentioned the term "managed scarcity" in your testimony.

Mr. WOOD. This was just something I had heard from talking to other folks involved with Ticketmaster, that they have alleged there are cases where Ticketmaster will hold back tickets for sale to create demand and then perhaps raise the price or raise the service charge, or whatever, and then release them. One particular instance I heard of they had one show scheduled of a performer. They waited until there was a huge demand, sold those, then scheduled a second show. They eventually ended up scheduling six shows but they didn't market six shows to start with. So they waited to sort of generate the demand for the tickets that were "sold out" even though they were available.

Mr. MANTON. You support this bill even though I think in your testimony you've talked about antitrust and other things that we are not specifically covering?

Mr. WOOD. Yes. This bill is a good first step. We think that the industry is subjecting consumers to lots of abuses that go beyond the scope of this bill. We just urge the committee and the Congress to look at additional measures.

Mr. MANTON. That concludes my questioning. I thank both Mr. Lefkowitz and Mr. Wood for being with us today.

Mr. LEFKOWITZ. We thank you, Mr. Chairman.

Mr. WOOD. Thank you, Mr. Chairman.

Mr. MANTON. That concludes our hearing for today. Thank you all very much.

[Whereupon at 1 p.m. the hearing was adjourned.]

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